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*National Public Service Project 2005-06:
HIV Legal Checkup*

Answering the Call

Answering the Call: HIV Legal Check-Up

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I. INTRODUCTION

Each year the American Bar Association Young Lawyers Division selects a national public service project that can be implemented by individual young lawyers and by the Division's 300 young lawyer affiliate organizations. For 2005-06, the focus of our public service project is on those living with HIV/AIDS.

People living with HIV/AIDS face a unique array of legal challenges, many of which may not immediately jump to mind for those who are unfamiliar with the disease and its impact. In addition to issues such as employment discrimination and access to health care, many must deal with considerable challenges in areas such as bankruptcy, immigration, privacy and confidentiality, government benefits, family law, and a host of others. If it is difficult for unwary attorneys to identify these issues for the HIV/AIDS community, then one can easily understand why people who are living with the disease and who do not have the training to identify their own legal needs only do so once significant problems develop.

Many of these problems stem from the unnecessary disclosure of one's HIV status -- a disclosure that might have been prevented had the individual been informed of his or her rights and/or been provided with preventative legal counseling at an earlier point in time. Indeed, it is widely recognized among AIDS experts that unnecessary disclosures serve to inflame the stigma and discrimination associated with HIV/AIDS. The stigma and discrimination, in turn, further deter vulnerable persons from getting tested for HIV and receiving prevention counseling. Thus, the disease continues to spread. In fact, of the roughly one million people living with HIV/AIDS in the United States, it is estimated that about one-third do not know they have the disease.

For these reasons, the U.S. Centers for Disease Control and Prevention (CDC) recognized the critical role that lawyers have to play in combating the HIV/AIDS pandemic when, in its *Revised Guidelines for HIV Counseling, Testing, and Referral* (MMWR: MORBIDITY AND MORTALITY WEEKLY REPORT, 50:RR-19 (November 9, 2001)), the CDC indicated that a referral to legal services is among the first things that should be provided to people when they learn that they are HIV-positive. Never before had the CDC recommended an immediate referral to legal services based on someone having been diagnosed with a particular disease. Instead, the CDC's recommended referrals had typically enumerated more conventional items, such as referrals for medical case management and psychological counseling. This extraordinary recommendation underscores the unique challenges faced by people living with HIV/AIDS, as well as the important role that legal services can play in helping those with HIV/AIDS and in stopping the spread of the disease. *Answering the Call* is the ABA Young Lawyers Division's response to this call to action from the public health sector. This national public service project educates lawyers about the numerous legal issues related to HIV/AIDS, and encourages young lawyers and young lawyer organizations to reach out to this community.

One of the primary components of *Answering the Call* is *HIV Legal Check-Up*, a diagnostic legal needs assessment program designed specifically to bridge the gap between the CDC's recommended referral to legal services and the effective delivery of those services by the legal community to people living with HIV/AIDS. *Check-Up* was developed by the Los Angeles City Attorney's Office HIV/AIDS Discrimination Unit in collaboration with the HIV/AIDS Legal

Services Alliance (HALSA, Inc.). In addition to being part of the ABA Young Lawyers Division's *Answering the Call* project, *Check-Up* will be promoted by the ABA's AIDS Coordinating Committee through its AIDS Legal Services Initiative.

With *HIV Legal Check-Up*, an attorney provides a consultation to identify the legal needs of someone living with HIV/AIDS and to thereafter refer the individual to appropriate services. The premise is simple, but the impact is profound. *Check-Up* has been successfully used to identify and address the legal needs of many people living with HIV/AIDS before these issues manifested into serious problems. In fact, *Check-Up* has been lauded for its capacity to identify, on average, one or two previously unrecognized legal issues for each person it is used to serve. *Check-Up* is also a tremendously flexible program that can be readily tailored to suit the needs and resources of any community. It is a powerful mechanism for identifying incipient legal needs before they become problematic; for promoting the more effective use of legal services resources; for reducing stigma and discrimination; and for ensuring access to treatment and prevention counseling.

The ABA Young Lawyers Division is proud to take part in the effort to assist those living with HIV/AIDS and to end the HIV/AIDS pandemic. For more information on this project, please visit our website at www.abayld.org. Thank you for your interest in joining us in *Answering the Call*.

Sincerely,

Christina Plum
Chair, ABA Young Lawyers Division, 2005-06

Seth D. Levy
Coordinator, *Answering the Call* Public Service Project, 2005-06

II. HIV LEGAL CHECK-UP IN PRACTICE

An attorney conducting an *HIV Legal Check-Up* meets with an individual to discuss his or her particular situation, assess any legal needs, and provide referrals or other self-help “action items” to address the identified needs. These consultations typically take about 30-45 minutes. Attorneys can work through a comprehensive checklist or questionnaire of legal issues. A sample questionnaire generously provided by the HIV/AIDS Legal Services Alliance (HALSA, Inc.) is included as an Appendix to these materials. Note that HALSA is a California-based agency; owing to variation in law from state to state, care should be taken in devising a similar questionnaire or checklist for another jurisdiction where the law -- particularly as it relates to HIV/AIDS -- may be quite different in scope and/or application.

Prior to conducting an *HIV Legal Check-Up*, an attorney should have referral information compiled or readily accessible, especially for the areas of law that most frequently present challenges for people living with HIV/AIDS. Many of these areas of law are described in these materials. One of the critical features of *Check-Up* is the ability to not only identify legal needs, but to also immediately refer individuals to the services necessary to address those needs. Therefore, an attorney should have referral information on hand such that it can be easily provided to someone for whom the attorney conducts a *Check-Up*. The nature of that referral information should be tailored to reflect the services available in a particular community. It might include local legal services providers, programs in the state/local bar association, local courthouse, or law school, *pro bono* referral panels, or information that has been compiled by competent organizations to enable individuals to perform self-help in appropriate instances. Insofar as local services are not available for a particular legal issue, an attorney should attempt to seek out national resources or other information that can be provided to an individual should he or she present a legal need that cannot be addressed by a local agency or private attorney. Indeed, if a particular legal need is frequently presented but there is no local agency or private attorney that can provide assistance, the attorney participating in *Check-Up* may take the initiative to develop such services, having now identified an otherwise unmet legal need in the community. This is one of the collateral benefits of *Check-Up*.

One of the key themes in the law as it pertains to people living with HIV/AIDS is the issue of unnecessary or improper disclosures of HIV status. It is therefore of particular importance that attorneys participating in *HIV Legal Check-Up* are exceptionally cognizant of their confidentiality obligations under the local Rules of Professional Conduct as well as state and federal constitutional privacy provisions relating to HIV/AIDS that prohibit the disclosure of a person’s HIV status. An individual’s HIV status must be carefully protected, and should not be revealed without the individual’s prior written consent. If someone’s HIV status must be revealed in the course of counseling or representation following a *Check-Up*, or for some reason, in the course of providing *Check-Up* services, that person should be asked to sign a waiver of their right to confidentiality and the attorney should be sure that the individual understands the possible consequences of any such disclosure. From a practical standpoint, *Check-Ups* should be conducted in a manner and setting that is respectful of these important confidentiality rights and obligations.

III. AREAS OF LAW

From the moment of diagnosis, the legal landscape changes dramatically for people living with HIV/AIDS, and continues to do so as the person continues living with the disease. HIV/AIDS impacts many facets of a person's life, and, correspondingly, has a multitude of legal implications. *HIV Legal Check-Up* provides an approach for detecting previously unrecognized legal needs and connecting individuals with the services required for addressing them.

Following is a brief primer on some of the more common legal issues confronted by people living with HIV/AIDS and that can be assessed with *Check-Up*. **These materials are by no means a comprehensive analysis of any area of law, nor are they an exhaustive list of every legal issue that may arise for people living with HIV/AIDS.** Instead, this information is provided so that lawyers who implement *Check-Up* have at least a basic understanding and appreciation of the relevance of certain key legal issues, thereby enabling them to ask appropriate questions and conduct effective *Check-Ups*. Notably, many of these issues vary significantly from state to state, and care should be taken in ensuring that appropriate legal information is always provided.

A. PRIVACY AND CONFIDENTIALITY

Virtually every complaint of AIDS discrimination begins with an unnecessary disclosure of AIDS or HIV information to someone without the training and understanding to handle it properly. There is generally no legal requirement that an HIV-positive person disclose his or her status to anyone. Rather, it is the responsibility of service providers to take universal precautions to prevent HIV transmission and act in a non-discriminatory manner. Following is an overview of some rights people living with HIV/AIDS have to control the disclosure of information about their HIV status in connection with scenarios that frequently arise.

1. Release of HIV Test Results

Written authorization is generally required to release HIV test results, and special civil and criminal penalties are imposed for unauthorized disclosures. In order to release HIV test results, a service provider usually must have written authorization; disclosure without authorization carries the aforementioned civil and criminal penalties.

2. Partner Notification Programs

After testing positive, individuals may be asked to participate in a partner identification process, usually operated by the county health department. Most partner notification programs seek voluntary participation from a person to inform his or her sexual partners or others they may have exposed to HIV. If an individual refuses to inform these partners voluntarily, he or she may be asked for the partners' names so that a physician or someone from the health department can contact these sexual and/or needle sharing partners to let them know about the possible exposure. The individual generally has no legal obligation to provide the physician or county with these names. Moreover, a person's identity generally cannot be revealed and the partners are only told that he or she may be at risk because of sexual activity or drug use. In reality, partner notification may still result in the person's status becoming known to these partners, especially if the partners have engaged in high-risk behavior solely with the individual.

3. Disclosure by Medical Providers

The disclosure of HIV lab test result records without written authorization is generally prohibited, even in response to a subpoena. Other information about a person's HIV status may be subject to a medical provider's legal duties under state and federal confidentiality laws. In addition, emerging lines of cases in some states suggest that all HIV information is further protected by state right-to-privacy guarantees. These rights impose on holders of HIV information heightened duties to maintain the confidentiality of such information. While doctors and dentists are generally obligated to protect their patients' privacy, people should be aware that other information related to HIV treatment (*i.e.*, other than the actual test result) may be disclosed to insurers to obtain reimbursement.

4. Testing While Under Medical Care

In some states, it is illegal to test a person for HIV without first obtaining written consent; treating physicians may test with informed consent, which may be oral. Before a person can be tested, he or she is entitled to an explanation of what the test means, what procedures are used, and why it may be important to know one's HIV status in order to begin receiving medical treatment if the result is positive. An individual may also be given information about how he or she can be tested anonymously and to whom the results may be given if he or she is not tested anonymously.

5. Testing Without Consent

Under some circumstances, authorities may test one's HIV status without consent. These circumstances might include when the patient is accused of a sexual crime, is accused of assaulting a peace officer, or is in prison. In these instances, the individual's status may be shared with certain other persons, such as prison authorities and alleged crime victims.

6. Testing by Insurance Companies

Health insurance companies cannot require an HIV test as a condition of insurance nor can they acquire lab test result records from an individual's physician. However, insurers are generally entitled to all other information reasonably related to the filing of an insurance claim, including information that may be related to a person's HIV status. Attempting to conceal one's HIV status by omitting information about treatment may be grounds for termination of coverage.

Insurance companies can generally require that an individual take an HIV test for life and disability insurance coverage. In this situation, the company is usually required only to provide the person seeking coverage with basic written information about the test and how the results will be used. Although life and disability insurance companies are prohibited from sharing HIV test results with other companies, insurance companies do report the condition as a "miscellaneous blood disorder" to a national medical information data bank. "Miscellaneous blood disorder" is generally understood in the insurance industry to mean HIV. Consequently, individuals should be careful about applying for insurance without first understanding what medical information will be required.

7. Disclosure and Employment

In general, an employee has no duty to disclose his or her medical condition to an employer or to co-workers. There are limited exceptions to this general rule. For example, workers in highly regulated industries may be required to disclose more information about their health status in the course of completing physical exams before employment or after returning from an absence.

If a person's disability requires "reasonable accommodation," his or her physician can state simply that the individual has a disability that requires accommodation, and describe the

functional limitation(s) that requires accommodation. Neither the physician nor the employee need disclose the underlying diagnosis.

Many employers handle insurance claims internally; claims may be filed with someone in the company who would thus have information about a person's HIV status. An employer may also obtain information from its insurance company about medical claims submitted by employees in order to monitor its health insurance costs. Employers are generally required to strictly segregate this information such that general management staff and co-workers who do not have a need to know do not have access to the information.

B. DISCRIMINATION

Local, state and federal laws prohibit discrimination against people living with HIV/AIDS. Most discrimination takes place after a person discloses that he or she is HIV-positive. Among the best ways to prevent discrimination is to advise people living with the disease that in only rare circumstances are they required by law to reveal their HIV status, and rarely can they be tested for HIV without consent. There are, however, circumstances when someone should reveal his or her status in order to receive proper treatment (*e.g.*, in a medical or dental setting).

Following is a brief overview of some of the laws prohibiting discrimination, followed by a list of the government agencies where particular complaints may be filed. The first step in pursuing a discrimination claim is typically to file an administrative complaint with one of the agencies enumerated below.

1. Federal Law

There are two principal federal laws that protect persons living with HIV/AIDS from discrimination: the Americans with Disabilities Act and the Rehabilitation Act of 1973.

a. Americans With Disabilities Act (ADA)

Title I and Title V of the Americans with Disabilities Act of 1990 (ADA) prohibit employment discrimination against “qualified” individuals with disabilities in the private sector, and in state and local governments. The ADA protects individuals with disabilities, including people living with HIV, from discrimination in employment, government services, and public accommodations, including such private services as hotels, restaurants, theaters, businesses, and health care providers. The employment provisions of the ADA apply to employers with fifteen or more employees, although state law frequently provides for a significantly lower number. A claim for employment discrimination under the ADA may be filed with the U.S. Equal Employment Opportunity Commission (EEOC). Complaints may also be filed with similar state agencies.

Some of the discriminatory practices that can be the basis of ADA violations include those in hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and disability leave; or other terms and conditions of employment. Discriminatory practices also include harassment on the basis of disability; retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices; employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals with disabilities; and denying employment opportunities to a person because of marriage to, or association with, an individual with a disability.

Under the ADA, a “qualified” employee or applicant with a disability is someone who satisfies the skill, experience, education, and other job-related requirements of the position held or

desired, and who, with or without “reasonable accommodation,” can perform the essential functions of that position. Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; and adjusting or modifying examinations, training materials, or policies. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation, however the employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an “undue hardship” on the operation of the employer’s business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as a business’ size, financial resources, and the nature and structure of its operation.

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked, however, about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

b. Rehabilitation Act

Sections 501 and 505 of the Rehabilitation Act of 1973 prohibit discrimination against qualified individuals with disabilities who work in the federal government. The Rehab Act prohibits discrimination by the federal government or recipients of federal funds based on physical handicap, including HIV. The Rehab Act covers employers who receive financial assistance from any federal agency or department. An administrative complaint under the Rehab Act may be filed with the Office of Civil Rights (OCR) of the federal agency that is funding the employer.

c. Remedies

The remedies available for employment discrimination, whether caused by intentional acts or by practices that have a discriminatory effect, may include: back pay, hiring, promotion, reinstatement, front pay, reasonable accommodation, or other actions that will make an individual “whole” (in the condition s/he would have been but for the discrimination). Remedies also may include payment of: attorneys’ fees, expert witness fees, and court costs.

Under most EEOC-enforced laws, compensatory and punitive damages also may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages also may be available if an employer acted with malice or reckless indifference. Punitive damages are not available against the federal, state or local governments.

In cases concerning reasonable accommodation under the ADA, compensatory or punitive damages may not be awarded to the charging party if an employer can demonstrate that good

faith efforts were made to provide reasonable accommodation.

An employer may be required to post notices to all employees addressing the violations of a specific charge and advising them of their rights under the laws EEOC enforces and their right to be free from retaliation. Such notices must be accessible, as needed, to persons with visual or other disabilities that affect reading. The employer also may be required to take corrective or preventive actions to cure the source of the identified discrimination and minimize the chance of its recurrence, as well as discontinue the specific discriminatory practices involved in the case.

2. State Law

Antidiscrimination laws vary from state to state. Many states have explicit protections for people living with HIV/AIDS. Fair employment and housing acts, for example, may afford protections from discrimination based on physical handicap, including HIV/AIDS. Other broad-based civil rights laws may also apply. To file a complaint, individuals should generally contact the city attorney or county counsel in the appropriate jurisdiction.

3. Examples of Discrimination Protection

a. Employers

Employers typically cannot discriminate against a “qualified individual” in hiring or employment because he or she has HIV/AIDS, or because the employer thinks the individual might have HIV/AIDS. State and federal antidiscrimination laws protect persons who are wrongfully treated based on their actual or perceived HIV status, whether they are living with the disease or not. In fact, individuals generally do not have to disclose their status to seek protection under these laws. An employer is required to make “reasonable accommodations” for a person with HIV/AIDS. Failure to do so is a violation of certain state and federal antidiscrimination laws.

b. Physicians and Dentists

In general, doctors and dentists can lawfully inquire about a person’s HIV status. Indeed, this may be important in order to provide the most appropriate medical care. However, patients do not have any obligation to disclose their HIV status, even to doctors and dentists, and even if they are specifically asked (*e.g.*, on an intake form in a doctor’s office). Affirmatively lying to one’s doctor or dentist about one’s HIV status is likely to be problematic, but simply refusing to report it is generally not illegal or actionable. Whether treatment can be denied if a patient refuses to disclose his or her HIV status is a state-specific and fact-specific issue that should be addressed by a local expert in this area.

Assuming HIV status is disclosed, physicians and dentists cannot refuse to treat an individual living with HIV/AIDS based simply on that status. Medical professionals generally can only refuse to treat if the specific medical condition at issue is outside of their medical expertise. In those instances, doctors and dentists have an ethical duty to refer patients to practitioners who are

qualified to treat the condition.

Furthermore, physicians and dentists cannot claim ignorance of HIV/AIDS and seek to refer patients out on that basis. Medical professionals are expected to know basic medical facts about HIV/AIDS. For instance, if an HIV-infected dental patient is severely immune-compromised, it may be appropriate for a dentist to refer him or her to a clinic with a more sterile environment for treatment, but only if other severely immune-compromised patients would be similarly referred. On the other hand, an asymptomatic HIV-positive person who needs a tooth pulled typically presents no special medical problems and generally should not be refused care. In addition, physicians and dentists cannot refuse to treat because they fear the risk of infection to themselves, their staff, or other patients. Instead, they are required by law to take universal precautions when treating any patient.

c. Businesses and Public Agencies

Except in the case of certain religious programs, businesses and public agencies cannot refuse to provide services to people living with HIV/AIDS simply because they have HIV/AIDS. However, individuals must meet the legitimate requirements of program or businesses in order to receive the desired services, and those with HIV/AIDS may therefore be denied treatment on other bases. For example, a private hospital may refuse to give a patient non-emergency treatment if the patient cannot pay, but the hospital cannot legally refuse to treat the patient just because he or she has HIV/AIDS.

d. Administrative Agencies Handling Issues of Discrimination

(1) U.S. Equal Employment Opportunity Commission (EEOC)

The U.S. Equal Employment Opportunity Commission is a federal agency charged with enforcing the nation's employment civil rights laws, which include, among others, the ADA and the Rehab Act. A charge with the EEOC must be filed within 180 days of the discriminatory act, although this requirement may be waived in some instances. A charge may be filed by mail or in person at the nearest EEOC office. Individuals may call 1-800-669-4000 to contact the nearest EEOC office for more information on specific procedures for filing a charge.

Once the charge is filed, an investigation is conducted (sometimes including a fact-finding conference), and if the evidence establishes that discrimination has in fact occurred, the employer and the charging party are informed of this in a letter that explains the EEOC's findings. The EEOC will then typically seek conciliation with the employer to develop a remedy for the discrimination. If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither the EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored. If the EEOC is unable to successfully conciliate the case, however, the EEOC will decide whether to bring suit in federal court. If the EEOC decides not to sue, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf. This is known as a "right to sue" notice. This notice is typically required before an individual can file suit against

his or her employer, otherwise the case may be dismissed based on the plaintiff's failure to first exhaust his or her administrative remedies.

In cases against state or local governments alleging violations of Title VII of the Civil Rights Act of 1964 (prohibiting employment discrimination based on race, color, religion, sex, or national origin) or the ADA, the U.S. Department of Justice is typically responsible for the aforementioned actions.

(2) Office for Civil Rights (OCR)

Complaints under the Rehab Act are handled by the Office for Civil Rights of the federal department or agency that employs the individual or is funding the employer. You can locate each OCR by calling the local office of the appropriate federal department or agency. Complaint forms are available from OCR and must generally be filed within 180 days of the incident of discrimination, either in Washington, D.C. or with the regional office.

(3) State Fair Employment Practices Agencies

Many states have an agency responsible for processing violations under the state's fair employment and/or housing laws. To begin the process of a complaint, an individual generally needs to contact the agency and proceed through various administrative matters in order for the agency to make a determination as to whether it will proceed with an action against the employer or other entity that has discriminated against the individual. If the agency does not pursue the case, a "right to sue" letter may be issued so the individual can pursue legal action on his/her own.

Through the use of "work sharing agreements" between the EEOC (a federal agency) and the state agencies responsible for enforcing state fair employment and housing laws, the EEOC and these agencies avoid duplication of effort while at the same time ensuring that a charging party's rights are protected under both federal and state law. If a charge is filed with an appropriate state agency but is also covered by federal law, the state agency "dual files" the charge with the EEOC to protect federal rights. The charge usually will be retained by the state agency for handling. If, however, a charge is filed with the EEOC and also is covered by state or local law, the EEOC "dual files" the charge with the state or local agency, but ordinarily retains the charge for handling.

C. HOUSING

Many landlord/tenant issues affect people living with HIV/AIDS. Discrimination in housing is covered by many of the same laws that are discussed above under that heading. Other typical issues that arise in the landlord/tenant and more general housing context include habitability problems, Section 8 issues, relocation assistance, HOPWA/Short Term Assistance Program, eviction, and rent increases. Some of these are straightforward issues that can be readily handled by attorneys who routinely handle housing matters, such as eviction defense and Section 8 issues. There are, however, several housing law issues that are somewhat unique to the HIV/AIDS community.

1. Housing Opportunities for Persons with AIDS (HOPWA)

The U.S. Department of Housing and Urban Development's (HUD) Office of HIV/AIDS Housing manages the HOPWA program in collaboration with forty-four state and area Community Planning & Development (CPD) offices in providing guidance and program oversight. HUD established the HOPWA Program to address the specific needs of people living with HIV/AIDS and their families. HOPWA makes grants to local communities, states, and nonprofit organizations for projects that benefit low income individuals living with HIV/AIDS and their families. HOPWA funds may be used for a wide range of housing, social services, program planning, and development costs. These include, but are not limited to, the acquisition, rehabilitation, or new construction of housing units, costs for facility operations, rental assistance, and short-term payments to prevent homelessness. HOPWA funds also may be used for health care and mental health services, chemical dependency treatment, nutritional services, case management, assistance with daily living, and other supportive services.

2. Rent Payment

Many people living with HIV/AIDS face financial hardships as they struggle to make ends meet living month-to-month on limited income or public benefits. Many individuals are entitled to rental or mortgage assistance through the local HOPWA program or other rental assistance program. Many also face eviction proceedings when rent is not paid in a timely manner.

D. IMMIGRATION

Immigration issues can be particularly challenging for people living with HIV/AIDS, although this is a highly specialized field in which very few attorneys have significant experience. The Immigration and Nationality Act (INA) contains most of the United States' immigration laws. First and foremost, it is generally best for individuals with potential immigration issues to speak with an immigration attorney before contacting the Department of Homeland Security (DHS) (as of March, 2003, the Immigration and Naturalization Service was abolished and its functions and units were incorporated into DHS), even if that contact is simply to answer a question regarding immigration status.

DHS enforces the U.S. immigration laws through three bureaus: Citizenship and Immigration Services (CIS), which provides immigration-related services and benefits such as lawful permanent residence, naturalization, and work authorization; Immigration and Customs Enforcement (ICE), which investigates and enforces federal immigration laws, customs laws, and air security laws; and Customs and Border Protection (CBP), which is responsible for the borders. DHS has offices all over the country. It handles immigration applications of all kinds, including those for citizenship, lawful permanent residence, immigrant visas, extension of visas, and others. It also has the power to remove (formerly "exclude" and "deport") non-citizens from the United States. DHS agents have police-like power to detain, search, question, and arrest people who they suspect may have violated the immigration laws. Agents may use information they discover about a non-citizen as evidence to remove the non-citizen, in some cases without giving the non-citizen a chance to make his or her case at a hearing in front of a judge.

1. Definitions

a. United States Citizen

A citizen is an individual who was either born in the U.S. or "naturalized" by DHS.

b. Lawful Permanent Resident (LPR)

A LPR is any person who is not a citizen of the U.S. who is legally residing in the U.S. as a legally recognized and lawfully recorded permanent resident. This is also referred to as "Permanent Resident Alien," "Resident Alien Permit Holder," and "Green Card Holder."

c. Visa

A visa is the official government document given to an immigrant to come into or stay in the U.S. A person may get a visa from DHS or from a U.S. consular official in another country. Visas for people who are in the U.S. temporarily are called "non-immigrant visas" (*e.g.*, a tourist visa). Visas for people who plan to stay in the U.S. permanently are "immigrant visas." Every individual with a valid, current visa should have a DHS document that identifies his or her immigration status.

d. Undocumented

Undocumented individuals are those immigrants who either entered the U.S. without DHS permission or whose legal immigration documents have expired since they entered.

2. HIV as Grounds for Removal (Exclusion and Deportation)

a. How It Works

Removal is the process by which DHS stops non-citizens from entering or staying in the United States. DHS may prevent non-citizens from entering the U.S. if they are “inadmissible,” as defined by the immigration statute. The rules on inadmissibility also apply to people who seek LPR status, and DHS may prevent non-citizens from obtaining that immigration status. DHS can also remove certain people it finds in the U.S. Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, undocumented non-citizens inside the U.S. now can be removed for being “inadmissible” or “deportable.”

DHS regulates who is in the U.S. in two ways: (1) inadmissibility (*i.e.*, preventing people from entering) and (2) deportation (*i.e.*, sending people already in the U.S., out). Being HIV-positive is grounds for inadmissibility, but is not grounds for deportation. Therefore, one cannot be deported solely based on one’s HIV status. Regarding inadmissibility based on HIV status, however, some HIV-positive non-citizens may qualify for a status such as asylum, which overrides the HIV ground of inadmissibility.

b. Deportation

Citizens are the only people who DHS does not have the authority to deport for any reason. Thus, like any other citizens, those living with HIV/AIDS are safe from deportation. However, DHS can deport non-citizens for a number of reasons (unrelated to HIV status). Although HIV status alone will not result in a non-citizen being deported, many non-citizens living with HIV/AIDS have additional concerns about deportation; for instance, being deported and returned to a country where there is little or no health care available for people living with HIV/AIDS, or where there is rampant discrimination and abuse faced by this community.

c. Exclusion

DHS does not test people for HIV when they try to enter the U.S., but those attempting to enter must first apply for a visa. The government form for non-immigrant visa (for those coming to the U.S. temporarily) asks: “Have you ever been afflicted with a communicable disease of public health significance...?” HIV seropositivity (*i.e.*, being HIV-positive) is considered a “communicable disease of public health significance.” DHS can and does seek to exclude anyone who answers “yes” to this question. DHS may also keep out anyone who it reasonably believes is HIV-positive.

d. Travel

Before traveling abroad, non-citizens (including LPRs) should consult an immigration attorney. When a non-citizen (including LPRs) attempts to enter the U.S., he or she may be subject to several possible grounds of inadmissibility. Being HIV-positive is one reason that anyone other than a citizen may be deemed inadmissible.

In fact, finding HIV-related medications or literature about HIV/AIDS in an immigrant's luggage may lead a DHS officer to ask a traveler questions about his or her HIV status. If a DHS officer questions an immigrant's HIV status, the immigrant can (and probably should) talk to a lawyer before answering those questions. If DHS suspects an individual might have HIV/AIDS, a hearing may be scheduled with the Immigration Court, and anything the immigrant says can be used in the hearing. The immigrant is allowed to have a lawyer present, although one will not be appointed.

3. Asylum and Refugee Status

Asylum and refugee status are for those who show that they have a "well-founded fear" of persecution in their homelands based on race, religion, nationality, political opinion, or membership in a social group. Refugees are those who have applied for and have been granted asylum before they came to the U.S. Those who apply for asylum once they are in the U.S. are asylum applicants. If they are granted asylum, they become asylees. Some asylum applicants are granted withholding of removal (formerly "withholding of deportation") instead of asylum. People who do not qualify for asylum or withholding of removal may ask for protection under the Convention Against Torture (CAT). Refugees must obtain an HIV waiver prior to coming to the U.S. Asylum applicants, withholding of removal applicants, and applicants under CAT do not need an HIV waiver.

DHS has officially recognized that persecution against HIV-positive non-citizens may satisfy the asylum requirements, and some people have obtained asylum because they feared persecution for their sexual orientation. Non-citizens may request asylum in several venues. If they have not been arrested by DHS, they may apply for asylum "affirmatively" to DHS. Non-citizens may also apply for asylum "defensively" before an immigration judge in immigration court. Being undocumented and being HIV-positive do not prevent people from applying either way. There are several advantages to applying directly with DHS: (1) the applicant does not risk immediate deportation if the affirmative application is denied, and (2) the applicant gets another chance to apply defensively when he or she is in immigration court. A non-citizen might be more likely to win an affirmative case before a DHS officer rather than a defensive case before an immigration judge, or vice versa, depending on the predilections of the local immigration officers and courts.

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act requires that individuals apply for asylum within one year of entering the U.S. Many people who would be persecuted in their homelands because they are HIV-positive or for other reasons will not realize that asylum is a possible way to gain safety and legal immigration status. Others may not have the resources or self-confidence to apply for asylum until they meet with an advocate. For these reasons, the one-

year filing deadline is a problem for many non-citizens. There are certain exceptions to the one-year filing requirement that must be addressed on a case-by-case basis.

To qualify for asylum, people living with HIV/AIDS must demonstrate that:

- They have been persecuted in the past or they will be persecuted if they return to their homelands;
- The people who persecuted them or who will persecute them are connected to the government in their home country or are people that the government cannot or will not control;
- The persecutors believe the applicants have a political opinion that they wish to suppress, such as the political opinion that people with HIV/AIDS should be treated with dignity, and/or the persecutors believe the applicants belong to a social group, such as people with HIV or gay men, which the persecutors wish to subdue; and
- The reason the persecutors will persecute or have persecuted the applicants is because they believe the applicants have a political opinion or belong to a social group they disfavor.

4. Lawful Permanent Residence (LPR)

a. Applying

DHS can deny LPR status to applicants who are inadmissible. Current law requires applicants for LPR to take a medical exam that includes an HIV test. Applicants who test positive require an HIV-waiver to become a LPR.

b. Eligibility Requirements

There are a number of situations in which an immigrant can become a LPR. Some include:

- immigrating to join members of the immigrant's immediate family;
- gaining refugee or political asylum status;
- being sponsored through an employer (this is typically among the more difficult ways to become a LPR);
- being from Guatemala, El Salvador, or certain Eastern European countries and meeting specific DHS requirements; and
- "registry," that is, continuous residence in the U.S. by a specific date established by DHS.

Most people obtain their residency status through certain immediate family members, which is defined by DHS as:

- mother or father, who must be a LPR or a citizen (regardless of the immigrant's age),

- spouse, who must be a LPR or citizen,
- child over the age of 21, must be a citizen, or
- brother or sister, who must be a citizen.

Any of the aforementioned family members can petition for an individual to become a LPR. Currently, domestic partners and same-sex spouses cannot. Moreover, depending upon the individual's situation and the category into which they fall in a complex quota system, processing time may vary from about six months to fifteen years or more.

c. HIV Exclusion and Waivers

Importantly, even if an individual living with HIV/AIDS has immediate family members who can sponsor him or her for LPR status, DHS can refuse to confer that status because the person is HIV-positive. As a general rule, people living with HIV/AIDS are excludable because the U.S. does not allow people to immigrate who have “contagious” diseases. This includes HIV/AIDS.

People seeking LPR status will be tested for HIV as part of the routine process. LPR status will not be granted for a person who tests positive for HIV unless DHS grants a “waiver.” In evaluating an applicant for an HIV waiver, DHS inquires as to the following:

- Is the immigrant a danger to the public health of the U.S.?
- Is the immigrant likely to spread HIV to others?
- In the event the immigrant falls ill, will he or she rely on government agencies for support without the prior consent of the agencies?

To persuade DHS that the answers to these questions will be “no,” the immigrant will generally want to show that he or she has private medical insurance to cover medical costs; is receiving counseling and medical treatment; has support from social workers, clergy, or others; and, usually, with some exceptions, the applicant must have a family member who is a citizen or LPR.

5. Citizenship

If an individual has been a LPR for a number of years (whether or not he or she is living with HIV/AIDS), he or she may apply to become a citizen. The requirements for citizenship (known as “naturalization”) are different from the requirements of “immigrating” to the U.S. DHS does not ask immigrants about their HIV status or require them to take an HIV test, but this is not the case for those seeking citizenship. Additionally, for citizenship, a LPR needs to show:

- LPR status for a minimum of five years (three years if the individual is married and living with a citizen spouse);
- Physical presence in the U.S. for at least half of the time he or she has been an LPR;
- The ability to speak and write English at the fifth grade level;
- The ability to pass a very basic “history” test; and

- That he or she is a person of “good moral character” (note: homosexuality no longer automatically equates to a finding of bad moral character by DHS).

A person with HIV/AIDS may find it especially beneficial to become a U.S. citizen because benefits for LPRs are continuously being reduced and because citizens may travel freely and reenter the U.S. without the possibility of exclusion.

E. INSURANCE

1. Public Health Insurance Programs

As with the general population, a variety of health insurance programs are available to people living with HIV/AIDS. Some are private insurance programs that are offered, for example, through employers or universities, or in which individuals can enroll directly. Some are public benefit programs for which an individual may qualify if he or she meets certain eligibility criteria. The benefits, requirements, and processes associated with these programs are complex and vary from state to state. Care must be taken in providing advice to individuals living with HIV/AIDS about insurance issues.

a. Medicare

Medicare is the national health insurance program for: people age 65 or older, some people under age 65 with disabilities, and people with end-stage renal disease (ESRD), which is permanent kidney failure requiring dialysis or a kidney transplant.

b. Medicaid

Medicaid is a federal program that pays for medical assistance for certain individuals and families with low incomes and resources. This program is jointly funded by the federal and state governments to assist states in providing medical long-term care assistance to people who meet certain eligibility criteria. Medicaid is the largest source of funding for medical and health-related services for people with limited incomes.

Medicaid benefits, requirements, and processes vary significantly from state to state. For example, some states have programs that pay for an individual's private insurance premiums rather than enrolling the individual in the state's Medicaid program. In some states, certain health maintenance organizations (HMOs) have contracts with Medicaid that permit members of the HMO who become eligible for Medicaid to continue HMO membership at no cost. The duration and termination of Medicaid benefits varies on a state-by-state basis, and a variety of events or circumstances can result in the loss of these benefits.

c. State Medical Insurance

As a last resort, some states have subsidized insurance plans available to those who have been denied or have lost their health insurance involuntarily.

2. Private Life and Disability Insurance

a. Group Life Insurance

When terminating employment, an individual can generally take his or her life insurance

coverage with him or her, but the mechanics of doing so vary from plan to plan. There are usually two ways to keep the coverage in force: conversion and disability waiver of premium.

(1) Conversion

Most group life policies provide for conversion to an individual life policy for an amount up to the amount in force under the group policy. Once it is an individual policy, the insured will be responsible for paying the premiums. Rights under this provision typically must be exercised within a short period of time after losing the group coverage (*e.g.*, 31 days), or at least be on record as being interested in converting the coverage. If this provision is part of a person's policy, conversion should be an absolute right, wherein coverage cannot be denied based on HIV status.

(2) Disability Waiver of Premium

If an individual is leaving employment due to a disability, a Waiver of Premium provision will typically waive the payment of further premiums as long as the disability exists.

b. Selling a Life Insurance Policy

Many people with life-threatening illnesses, such as HIV/AIDS, become interested in selling their life insurance policies to obtain desperately needed cash. An entire industry has arisen coordinating these "viatical settlements," where investors pay a discounted price to the insured for the right to name themselves beneficiary of the policy. Because the investors' profits are made when they collect the death benefits, all types of life insurance policies are eligible for these sales -- whole life, term, universal, and even group life insurance from an employer. If an individual pursues this option, the purchasing company will need to contact the individual's insurance company and obtain the individual's medical records.

The amount that viatical settlement companies pay is generally between 50%-80% of the face amount of the policy, and generally is less if the policy is small (*e.g.*, \$10,000). The amount paid is based on a review of the policy and the medical records of the insured. The longer the life expectancy of the insured, the less the company will offer for a policy. These companies generally look for persons with life expectancies of less than two years. A few companies will make substantially reduced offers to people with longer life expectancies.

The process usually takes about six to eight weeks to complete and involves several steps. Although it is not particularly complicated, there are several things an individual can do to maximize payment. Additionally, there is very little regulation of this industry, so it may be advisable for people living with HIV/AIDS to deal only with reputable companies. In addition, there can be substantial tax implications or an impact on benefits if the person is receiving federal Supplemental Security Income (SSI) or state Medicaid benefits.

c. Disability Insurance Policies

Disability coverage is an optional private employment benefit that provides payments in the

event an individual is forced to leave work due to disability. For a monthly fee, an employee is generally guaranteed coverage with few, if any, medical questions to answer. People living with HIV/AIDS who are employed may want to inquire about such benefits and enroll while still reasonably healthy, because a disability claim filed shortly after coverage begins will be closely scrutinized; the insurer may even attempt to cancel coverage.

Before enrolling, people living with HIV/AIDS should carefully review the types of benefits that will be payable, because many plans reduce the benefits paid based on benefits received from other sources of income, such as Social Security Disability Income (SSDI).

3. Private Health Insurance

a. Testing as a Pre-Condition to Qualification

This issue varies from state to state. Specifically, it varies whether insurance companies are permitted to require an applicant to submit to a HIV test in order to qualify for health insurance coverage; ask applicants whether they have taken a HIV test; and ask for the results of previous HIV tests. However, health insurance companies may generally test for other conditions associated with HIV/AIDS, such as T-cell count, and thereby indirectly glean information about a person's HIV status. Note that insurance companies can (and often do) require an HIV antibody test for disability and life insurance coverage.

Having tested positive for the HIV antibody previously does not necessarily preclude a person from obtaining private health insurance coverage. In fact, people living with HIV/AIDS who are asymptomatic, have not received any further diagnostic testing, are not (yet) receiving HIV/AIDS-related treatment, and have had no other discernable medical problems may be able to obtain some health insurance. The HIV-asymptomatic person essentially has a window of opportunity to purchase health insurance coverage, if he or she can afford it.

When an insurance company requires a HIV test, it generally must pay for the test and obtain informed consent from the applicant. Informed consent generally must be written and must include a description of the test to be performed -- its purpose, potential uses, and limitations, the meaning of its results, procedures for notifying the applicant of the results, and the right to confidential treatment of the results, etc. The insurer may be required to provide the applicant with additional information about HIV and counseling resources.

A positive HIV antibody test will generally result in the rejection of an application for health insurance. It may be better to withdraw the application rather than be rejected under these circumstances.

Insurance companies generally cannot tell others of an applicant's positive HIV test results. However, companies can inform insurance industry databases that an insurance applicant has abnormal "nonspecific blood test" results. The Medical Information Bureau (MIB) is the largest insurance computer database. Adverse medical history obtained during the underwriting of a new insurance policy may be reported to MIB. If an individual later applies for new insurance,

the carrier will request information from MIB to determine if he or she has reported all existing medical history. MIB is designed to prevent insurance fraud, but also is used by insurance companies to avoid underwriting individuals who present a financial risk considered unacceptable by the company.

Information is typically only reported to MIB when adverse medical history is discovered about an applicant during the underwriting process. Medical history is not reported to MIB when an individual submits medical claims under an existing policy. Individuals are entitled to obtain a copy of any medical history recorded in MIB. MIB is located in Boston, Massachusetts, and can be reached at (617) 426-3660.

b. Pre-Existing Conditions

A pre-existing condition includes any medical condition an individual knows about when he or she applies for a health insurance policy. In other words, a person has a pre-existing condition if, before he or she obtained the policy, he or she sought medical treatment for the condition or had reason to believe that his or his or her health was impaired.

Most health insurance policies have a pre-existing condition clause, which provides that, for a certain period of time, any such condition will not be covered. The insurance company can generally avoid payment if the insured has had or has been treated for the same condition, not simply a related condition, within a “pre-existing condition period.” However, after the pre-existing condition period expires, the policy will generally cover the insured for that condition. This means that any injury, illness, or condition for which the insured was receiving medical care, lab tests, or treatment when he or she obtained the policy will not be covered until after the pre-existing condition period (typically six months) expires. If an insurance company refuses to pay a claim based on a pre-existing condition, the insured must prove that he or she did not have such a condition. Again, the company can generally only avoid payment if the insured has had or has been treated for the same condition, not a related one.

c. Canceling a Policy

A “contestable clause” is a provision in an insurance policy that establishes the period of time and/or conditions under which an insurance company can contest or rescind (*i.e.*, cancel) the insurance policy. After the period of time stated in the policy (usually 2-3 years), the policy cannot be canceled or contested. The contestable clause is used by insurance carriers to reduce the chance of fraud. The company will generally claim that had it known about the misrepresentation by the insured, it would never have issued the policy. If the company can support that proposition, it can generally rescind the policy and return all paid premiums to the individual. If the individual cashes the check, he or she generally has consented to the cancellation of the policy.

When completing an insurance application, people with HIV/AIDS, whose medical information may be somewhat complex, should be aware that the insurer may, under certain circumstances, assert that any omission of fact is a “material misrepresentation,” no matter how trivial that information may seem. Assertions of material misrepresentation frequently stem from an

applicant's failure to report the fact that he or she visited a particular physician for a particular ailment.

d. Cancellation

Insurance coverage can be canceled for several reasons, but, absent a material misrepresentation, generally not solely because a individual has HIV/AIDS. Common grounds for cancellation of coverage include, but are not limited to, non-payment of premiums, cancellation of group plans (employer, association, or trust), contestability/misrepresentation, fraudulent application, insurer or plan insolvency, and bankruptcy of plan or insurer. If an individual's insurance is canceled, he or she may be entitled to certain contractual rights, such as disability extensions, conversion options, or grace periods for non-payment of premiums.

e. Employer-Sponsored Plans

Among the easiest ways for people living with HIV/AIDS to obtain health insurance is through employment with a large company (50 or more employees). Coverage by a large employer's group plan is almost automatic. Large employer plans generally do not require health questionnaires or blood profiles. However, entry into a small employer's group plan may require such items.

f. Confidentiality in Employer-Sponsored Plans

Many employers handle insurance claims internally and require the insured to file claims with someone at the company who therefore learns of the claims' content. Also, employers may obtain information from an insurance company about medical claims submitted by employees in order to monitor their health insurance costs. Therefore, it is possible that an individual's employer or co-workers may have access to information about his or her health care information, including HIV status.

Individuals can attempt to prevent this by placing a confidential memo in their personnel file, stating that he or she has a medical condition, the wrongful disclosure of which is strictly prohibited by law. Additionally, it may state that if any adverse action is taken against the employee based on information that the employer received in an unlawful manner, the employee may have a claim of unlawful discrimination. Such a letter indicates to the employer that the individual is aware of his or her rights and puts the employer on notice that the individual is a member of a legally protected class.

4. Continuing Employer-Sponsored Coverage After Termination

The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires employers of twenty or more to offer continued health care coverage to terminated employees and their eligible dependents at the former employee's cost. Churches and government employers are exempt from these requirements. Some states have similar laws that extend some coverage protection in

certain circumstances to employees of companies with fewer employees than is required under COBRA. COBRA does not cover life and disability insurance.

Under COBRA, an individual may continue to have access to the same coverage that he or she had while employed by paying the insurance premium that his or her employer had previously paid, plus up to a 2% administrative fee. To continue health insurance under COBRA, the individual must elect to do so within sixty days of leaving active employment, or within sixty days of receiving the Notice of COBRA Rights from his or her employer, whichever is later. By law, the employer must notify the individual of his or her COBRA rights, in writing, within thirty days of him or her leaving employment.

COBRA coverage is tied to an individual's former employer's group health coverage, and, therefore, if the employer's insurance rate increases, the individual's rate will increase as well. If the employer changes insurance companies, the individual is permitted by law to change with the employer. Finally, if the employer cancels insurance coverage for all employees, the individual's coverage is also lost.

a. Length of COBRA Coverage and OBRA Disability Extension

A former employee can continue coverage under COBRA for up to eighteen months. In addition, the Omnibus Budget Reconciliation Act (OBRA) modified COBRA to extend the period of coverage for persons who leave their employment due to disability. If an individual was disabled when he or she began COBRA coverage, then that coverage may be continued an additional eleven months if: (i) the individual files for Social Security Disability Insurance (SSDI) benefits during the first eighteen months of COBRA; (ii) the individual is awarded Social Security benefits with a Date of Disability that is on or before the COBRA effective date; and (iii) the individual presents his or her former employer with a copy of his or her Social Security Award Letter within sixty days of receipt. This will provide coverage under the group plan for a total of twenty-nine months, which should carry the individual to Medicare eligibility, which generally takes effect after twenty-four months of SSDI eligibility.

b. Other Disability Extension of Coverage

If an individual is totally disabled when his or her coverage is terminated, either at the end of employment or the end of COBRA, his or her plan may provide for an extension of benefits. If available, it will typically continue coverage only for the disability that is causing the individual's total disability. For people living with HIV/AIDS, it is therefore important that an individual's physician use the broadest possible diagnosis in order to have all HIV/AIDS-related conditions covered by the extension, and not just one specific illness or condition. Premiums are generally not required during the extension, and the extension rarely lasts more than twelve months.

c. Other Ways To Maintain Coverage: Conversion Of A Group Plan To An Individual Plan

Some state laws require that group health insurance policies contain a "conversion" option. This

allows an insured to “convert” his or her participation in the group plan into an individual policy without additional health questions or a pre-existing condition clause that a new individual health care policy would generally include. Conversions typically must be applied for within thirty-one days of coverage termination. Premiums for converted policies can be high, and may not have the same level of benefits as the group plan.

d. Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law introduced to improve the portability and continuity of health insurance coverage in the group and individual markets; to combat waste, fraud, and abuse in health insurance and health care delivery; to promote the use of medical savings accounts; to improve access to long-term care services and coverage; to simplify the administration of health insurance; and to satisfy a variety of other purposes. HIPAA allows for the purchase of an individual health insurance policy under the following conditions:

- An individual’s last coverage was from a job-related group health plan;
- The last eighteen months of coverage was without a lapse of over sixty-three days;
- If available, COBRA was accepted and has been exhausted;
- The individual is not otherwise available for other health insurance, Medicare, or Medicaid; and
- Health coverage was not lost due to non-payment of premiums or fraud.

F. FAMILY LAW

From the moment of diagnosis, a multitude of family law issues arise for people living with HIV/AIDS, as well as their families and loved ones. Like many other areas of law, key issues with respect to HIV/AIDS in the family law context often involve the disclosure of one's HIV status and the impact of that disclosure; specifically, whether a disclosure has occurred and/or is required in a particular situation or to a particular party, and whether determinations impacting one's family can be lawfully predicated upon that disclosure.

With respect to family law matters, the legal needs of people living with HIV/AIDS often involve estate and permanency planning, issues surrounding divorce and child custody, spousal disclosure, housing, government benefits, health insurance, and adoption. People living with HIV/AIDS should be aware of family planning options available to them and the critical role that their HIV status may play in these matters.

Many of these issues vary significantly on a state-by-state basis.

1. Permanency Planning

a. Guardianship

One of the most common family-related needs for people living with HIV/AIDS is to provide for the future care of minor children. Guardianships provide a means for doing so. Guardianships may be put in place to ensure that someone has the legal authority to make decisions for the child while the child's parent, who has HIV/AIDS, is incapacitated due to their illness (*e.g.*, hospitalized) or dies. A guardianship tends to be the most immediate way to ensure that someone is responsible for a child when there is no parent available or capable of doing so. A guardian does not become a child's legal parent; that is done through adoption.

Some states provide for joint guardianships, which specifically address issues for terminally ill parents. In some states, for example, a parent who has a terminal illness with debilitating symptoms can begin guardianship proceedings while he or she is still alive, without giving up his or her right to custody. With a joint guardianship petition, the parent asks the court to appoint both the parent, and someone the parent nominates, as joint guardians of the child. Then, if the parent becomes too sick to care for the child, or if the parent dies, the guardian chosen by the parent (and appointed by the court) can assume child care responsibilities.

b. Adoption

Courts' concerns regarding adoption by people living with HIV/AIDS tend to focus on whether the health of the parents would detrimentally impact their ability to care for the children, and whether an early death of the parent(s) before the child reaches the age of majority would detrimentally impact the psychological health of the child.

c. Foster Care and HIV/AIDS

People living with HIV/AIDS can typically be foster parents or operate a group home so long as their health does not prevent them from providing and caring for a child. However, if a licensing agency suspects that one's physical health may pose a threat to foster children, there are instances where the agency may require a physical health evaluation. The ADA prohibits discrimination based on HIV infection, and, as a result, adoption agencies may not categorically reject individuals as prospective adoptive parents based on HIV status. The law protects individuals with HIV disease, both symptomatic and asymptomatic; persons who are suspected of having HIV, whether they have the disease or not; and persons who have a known association or relationship with an individual who is HIV-positive.

A county foster care agency cannot refuse to place a child in a home simply because another child in the home is HIV-positive. Also, a foster parent generally has access to his or her foster child's medical records and can thus learn of the child's HIV status. If a foster parent discovers that his or her foster child has HIV, he or she is generally obligated to notify the foster agency.

2. Divorce

An individual's HIV status may be disclosed and have relevance in a divorce action under certain circumstances. It may or may not be the basis for the divorce itself. Following are several examples of instances in which HIV status is relevant for a divorce proceeding:

- Spouse seeking divorce was not aware of other spouse's HIV/AIDS status prior to the marriage, either because the HIV-positive spouse him/herself was unaware of his or her HIV status, or because he or she was not forthcoming with this information.
- Spouse contracts HIV/AIDS and other spouse seeks divorce. HIV/AIDS may have been contracted through infidelity (sexual contact with an HIV-positive individual), intravenous drug use, or other transmission means.
- Spouse with HIV/AIDS may be the party seeking divorce.

In no-fault divorce states, where neither spouse needs to provide a specific reason for the divorce other than that the spouse believes that the marriage is irretrievably broken, it is less likely that HIV status will be disclosed or bear any relevance to the divorce action.

If a divorce involves child custody and/or visitation (especially if there is a dispute over who should have custody of the children or where they should live), then a parent's health (including HIV status) may become a factor for the court to consider. Courts typically award custody based upon the best interests of the child. HIV/AIDS may significantly compromise a parent's ability to care for his or her child, and this might be taken into account by the court. However, many individuals live long, otherwise healthy lives despite having HIV/AIDS.

3. Planning for Future Medical Care

a. Power of Attorney for Health Care

Establishing a power of attorney or similar legal instrument (depending upon local law) can be particularly important for people living with HIV/AIDS.

A significant number of people living with HIV/AIDS are homosexual, and are generally unable to marry their same-sex partners whom they would want to be responsible for making medical decisions on their behalf. Some domestic partnership laws enable a same-sex partner to make medical decisions for his or her incapacitated domestic partner, but such laws vary significantly from state to state, and sometimes from community to community within a state. In addition, many of these individuals are estranged from their families. Thus, the situation often presents where a person living with HIV/AIDS becomes medically incapacitated, and the person's long-separated family comes back into the picture and makes medical decisions. Regardless of what the person's wishes may have been, as expressed to his or her partner, the partner has no automatic legal authority to make such decisions (absent a provision to the contrary in local domestic partnership law), or, in many cases, even to visit the ill partner who is hospitalized.

Health care powers of attorney generally enable someone to (i) name an agent to make medical decisions on the person's behalf when the person becomes unable to do so (including decisions regarding surgical procedures, alternative therapies, medications, and artificial life support), (ii) grant an agent the authority to make decisions regarding disposition of remains, and/or (iii) state his or her wishes regarding various health care issues, such as the use of artificial means of life support.

A hospital visitation authorization may be prepared to allow a person living with HIV/AIDS to specify in advance any individuals not related by blood or marriage whom he or she would always want to be admitted to visit him or her in the hospital if the individual were no longer able to communicate those wishes. Conversely, this document may also name individuals that the person would never want to be admitted to visit.

b. Guardianship/Conservatorship

Depending upon the particular circumstances of one's illness, a person living with HIV/AIDS may become unable to care for him/herself. In that instance, a court may appoint a guardian or conservator. In many instances, a family member can nominate him/herself to become the guardian/conservator of an adult relative, spouse or domestic partner.

4. Family Issues' Impact on Public Benefits and Child Support

Many public benefit programs designed to provide assistance to the indigent or disabled have very confusing eligibility requirements. Some programs' eligibility criterion include family status. Married individuals may thus, in certain instances, consider legal separation or divorce in order to qualify for particular programs. Likewise, individuals considering changes in family or

marital status in order to avoid debt obligations or improve the chances of obtaining health insurance benefits may additionally need to consider issues involving public benefits and/or child support.

5. Domestic Violence

If an individual is a victim of domestic violence or is in an abusive relationship, he or she may consider seeking a temporary restraining order (TRO) against the abuser. A TRO is a legal order of the court requiring that an abuser stay away from the subject of his or her abuse and comply with other behavioral restrictions. A TRO is also helpful in obtaining the intervention of local police authorities. A number of individuals living with HIV/AIDS are victims of domestic violence.

6. Wills

A will is an important tool for individuals living with HIV/AIDS. The laws of intestate succession vary from state to state. Generally, however, if an individual dies without a will, his or her property passes to his or her next of kin, regardless of what the individual's actual wishes may have been. If an individual is unmarried, has no children, and dies without a will, all of his or her property will generally pass to his or her parents. If his or her parents are no longer alive, the property will generally pass next to his or her brothers and sisters, or to their children, and so on. Therefore, the best way an individual can ensure that his or her property will pass in accordance with his or her wishes is through a will.

G. PUBLIC BENEFITS

Public benefit programs can be especially important for people living with HIV/AIDS. Securing public benefits can be a frustrating process. This is only exacerbated when an individual seeking these benefits is sick or disabled with a terminal illness. Meeting the requirements, producing the required information, and filling out the necessary forms takes time, energy, patience, and stamina, which many people living with HIV/AIDS do not have. In addition, simply applying for (or receiving) certain public benefits may have an adverse effect on a non-citizen's immigration status.

The primary income benefits available to people living with HIV/AIDS are: Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), State Disability Insurance (SDI), General Assistance or General Relief (GR), AIDS Drug Assistance Programs (ADAPs) and Medicaid and Medicare. Medicaid and Medicare are discussed in the Insurance section of these materials.

1. Social Security

The Social Security Administration oversees two disability programs: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Both of these are long-term disability programs. For purposes of these programs, a "disability" is an ailment, physical or mental, that prevents an individual from doing any kind of work for at least one year. Both severe, symptomatic HIV and AIDS diagnoses (based on infections) may qualify under various circumstances. A review of one's medical records and supplementary testimony are undertaken by SSA to substantiate a claim of disability. More information can be obtained about Social Security benefits by contacting SSA at 1-800-772-1213 or by visiting www.socialsecurity.gov.

a. Social Security Disability Insurance (SSDI)

SSDI is federal long-term disability insurance. It is an entitlement program, so one must have paid into Social Security through F.I.C.A. payroll taxes in order to collect SSDI. Award amounts vary widely, and are based on work history and the amount of F.I.C.A. paid. To qualify, an individual must meet SSA's definition of "disabled," meaning that one's disability will keep him or her from doing any kind of work at all for up to one year. There is a five-month waiting period before payments begin. An individual may backdate a SSDI claim as far back as medical records substantiate the onset of disability, and retroactive benefits can be paid for up to twelve months. An individual may generally collect SSDI and state disability together. An individual will usually receive Medicare automatically, 24 months after the first month for which he or she is entitled to receive a SSDI payment. Application processing time ranges from about two to three months. Applications for SSDI should be made at local SSA offices.

b. Supplemental Security Income (SSI)

SSI is a long-term financial assistance program administered by SSA for disabled people with limited or no income. Assets are restricted to a modest financial cap (excluding a car and

residence), and include items such as cash, checking and savings accounts, stocks, bonds, pension plans, the cash value of life or burial insurance plans, real estate, or anything else of value. SSI pays up to a particular monthly cap, and automatically includes Medicaid. Total income cannot exceed the SSI maximum payment. Application time is about two to three months. People with severe, symptomatic HIV or AIDS diagnoses (based on infections) may qualify for “presumptive eligibility.” With medical documentation, this means that SSA may award up to six months of “presumptive” payments while a claim is being processed. Some SSA offices can make the first payment immediately upon application if an individual’s documentation is in order.

2. State Disability Insurance (SDI)

Although it varies from state to state, SDI is generally a short-term financial assistance program for the disabled. An individual may generally collect benefits for a limited period of time (*e.g.*, up to one year). SDI is an entitlement program, which means that an individual generally must have worked in the state from which benefits are being sought and paid into SDI through payroll taxes in order to collect. Contributions must generally be recent and the individual must be attached to the labor force (working, or looking for work) when he or she becomes disabled.

3. General Relief (GR)

General Relief (GR) is financial assistance that may be available for individuals who do not meet SSA’s disability criteria and who have extremely limited incomes. Financial assets must generally be extraordinarily limited at the time of application. GR is a state/federal grant that must be paid back. GR recipients may also collect Food Stamps.

4. Food Stamps

Food Stamps are a federal and state program for low-income individuals and households, in which awards vary with the number in a household. Food Stamps may generally be used at any grocery store, but not for tobacco, alcohol, pet food, ready-to-eat food, or cleaning products. SSI recipients in some states receive a food supplement as part of their award and are not eligible for Food Stamps.

5. AIDS Drug Assistance Programs (ADAP)

ADAPs are state-based programs funded in part by Title II of the federal Ryan White CARE Act that provide therapeutics (including devices necessary to administer pharmaceuticals) to treat HIV/AIDS or prevent the serious deterioration of health, including treatment of opportunistic infections. ADAP formularies and eligibility criteria are determined on a state-by-state with a focus on serving low-income individuals. ADAPs generally do not cover all drugs.

H. DEBTOR/CREDITOR

Many people with HIV/AIDS are unable to work or work full-time because of failing health or other medical limitations. Thus, many have to rely on public disability payments for their necessities and generally have few or no assets. Consequently, many find themselves unable to pay their debts.

1. Consequences of Ignoring Debts

a. Discontinued Service or Repossession

If the creditor is a service provider, such as the utility company, services may be discontinued. If the debt is secured by collateral, such as a car loan or mortgage, then the creditor may repossess or foreclose on the collateral without a court order.

b. Harassing Telephone Calls and Demand Letters

Once payments stop, creditors or collectors begin contacting the debtor to demand payment. Such communication is purposely abusive and stressful in hopes that the debtor is convinced to make voluntary payments. This can be especially problematic for people living with HIV/AIDS, as this is an autoimmune disease that may be exacerbated by stress.

c. Obtaining and Enforcing a Judgment

A creditor may initiate a lawsuit to obtain a judgment against the debtor for the delinquent debt. The creditor generally must do so before the applicable statute of limitations expires. Although this varies from state to state, a judgment may be enforceable for a limited period of time (*e.g.*, ten years from date of entry), although it may be renewable for additional periods of time. A judgment allows the creditor to seek involuntary payments against the debtor's property or income. There may be limitations depending on the type of property or income. For instance, a judgment creditor may be able to garnish only a portion of the debtor's net pay. Creditors typically cannot seize or levy disability payments or welfare. The creditor may also create a judgment lien on real estate the debtor owns. Liens generally require payment once the real property is sold or refinanced. Creditors might also seize a debtor's vehicle in certain instances. If child or spousal support payments are owed, an individual may be criminally penalized.

2. General Debt Matters

a. Criminal Liability

Although this may vary from state to state, there are generally no criminal penalties for failing to pay a debt. There may, however, be criminal penalties for failing to pay child or spousal support, for knowingly writing a bad check, and for fraud.

b. Credit Report

If an individual becomes delinquent on a debt, most creditors will report to the credit reporting agencies: Experian, Trans Union, and Equifax. This can have a negative impact on the individual's credit rating, and the information can remain listed if it is accurate. Negative information, however, is automatically erased from one's credit report after seven years. Judgments and Chapter 7 bankruptcy remain reported for up to ten years.

c. Debts of a Decedent

Spouses and domestic partners may be liable for certain debts of their deceased spouse or domestic partner, respectively, and parents may be responsible for the debts of minor children. Friends, family, and unmarried partners are generally not responsible for the debts of a deceased person. Most creditors do not pursue consumer debt after death unless a probate is opened.

3. Debt Collection Practices

The federal Fair Debt Collection Practices Act (FDCPA) dictates how and when a debt collector may contact the debtor. Under both the federal (and some state) statutes, debt collectors must honor a written request from the debtor to stop further communication (*i.e.*, a notice to cease and desist communication). Sending a notice to cease communication does not make the debt go away if it is actually owed. Individuals may, however, include information about their health and finances in the letter, as doing so may at least discourage a lawsuit brought by the creditor.

Under the FDCPA, collectors may not do any of the following:

- Use obscene or profane language;
- Threaten to harm the debtor or the debtor's friends or relatives;
- Claim to be a law enforcement officer or other government official;
- Call the debtor at work if the employer says "no;"
- Falsely state that the debtor has committed a crime;
- Threaten to take the debtor's property unless the creditor has obtained a court judgment; or
- Falsely identify themselves as attorneys or use lawyers' stationery.

4. Judgment Proof

Individuals who have little or no income or property are referred to as being "judgment proof." Creditors may threaten a lawsuit against such individuals but are generally discouraged from actually initiating such action when they realize that the individual is judgment proof. Taking legal action against such individuals is likely to be a waste of the creditor's time and resources. As such, information about an individual's limited finances (*e.g.*, that the individual relies on disability income and has no assets) is usually included in a notice to cease communication. Even if an individual is judgment proof, a judgment can have negative consequences. In particular, the judgment will have a negative impact on the individual's credit rating. Also,

many landlords and employers review credit reports before renting or hiring. A judgment could make it difficult for the individual to rent an apartment or obtain certain jobs.

Individuals are not judgment proof if they are employed or own a home or an expensive car. However, many credit card companies are willing to negotiate a settlement payment or reduction of finance charges. An individual may contact Consumer Credit Counseling Services, a company sponsored by creditors that helps people consolidate their debts and arrange for minimum payments. Individuals who own property may have more to gain from a bankruptcy discharge. Bankruptcy, however, affects an individual's credit rating for up to ten years.

5. Student Loans

Student loans can generally be canceled if a doctor certifies that an individual is not able to return to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death. Once canceled, the individual can return to school without reviving the canceled debt. If cancellation is not an option because the individual is not permanently disabled, the loan can be deferred or put into forbearance. Note that if the loan is put into forbearance rather than deferred, the individual will generally have to pay interest.

6. Bankruptcy

Bankruptcy is a legally declared inability or impairment of ability of an individual or organization to pay their creditors. Bankruptcy is generally not recommended for persons who are judgment proof because creditors are less likely to initiate a lawsuit. Instead, creditors are more likely to allow the debt to expire under the applicable statute of limitations. Bankruptcy does not discharge all debts. For instance, federal and state taxes, child support payments, and student loans under most circumstances are not dischargeable through the bankruptcy process. If an individual's debt is primarily non-dischargeable in nature, a bankruptcy will provide little relief.

IV. CREATIVE IMPLEMENTATION

At its core, *HIV Legal Check-Up* is based on a holistic approach to the delivery of legal services to people living with HIV/AIDS. This disease impacts communities across the United States, and indeed, around the world. However, the demographics and particular legal needs of different communities vary dramatically, as can the nature and scope of legal services that are available to the affected population. The flexibility of *Check-Up* accounts for this diversity. *Check-Up* can be readily implemented in any community because it is easily tailored to account for local needs and existing services. In fact, while *Check-Up* is a powerful mechanism to serve the HIV/AIDS community in large, urban settings that boast a variety of dedicated services designed for people with HIV/AIDS, it is equally, if not more important, in communities that have no services available whatsoever.

Following are several examples of innovative ways in which *HIV Legal Check-Up* can be implemented in a range of settings. These examples are by no means an exhaustive list; rather, they provide an idea of the flexibility of *Check-Up* across a spectrum of communities. Attorneys are encouraged to think creatively about how *Check-Up* may be implemented in their own communities.

A. COMMUNITY WITH AN AIDS LEGAL SERVICES PROVIDER

Some cities are fortunate to have a local AIDS services organization that includes a legal services department or project. In fact, there are a number of organizations around the country that are entirely focused on the direct delivery of legal services to the HIV/AIDS community. In an area served by such an organization, volunteer attorneys can add significant breadth to the organization's program offerings by conducting *HIV Legal Check-Ups* for existing clients or for other individuals to whom outreach efforts may be directed through the organization's normal channels.

For example, AIDS legal services organizations may have staff attorneys who counsel and/or represent clients in a variety of legal issues, such as employment discrimination or public benefits. Yet, based on limited resources, it is likely that staff attorneys will have neither the time nor the resources to conduct *HIV Legal Check-Ups* for clients -- certainly not for every client. This is a terrific opportunity for volunteer lawyers to supplement an organization's existing programs by conducting *Check-Ups*; perhaps by offering a monthly clinic on-site at the organization's facility or by accepting referrals for individuals who express an interest in having a *Check-Up* performed. Structuring a program in this fashion can be of tremendous assistance to the organization in identifying legal issues that clients themselves have not identified. Following a *Check-Up*, many newly discovered legal needs might be handled directly by the organization or through its existing referral network.

B. COMMUNITY WITH A MEDICAL FACILITY

As discussed earlier in this manual, the CDC has indicated that people who are diagnosed as having HIV/AIDS should be referred to legal services as soon as possible. It is likely that many medical caregivers are either unaware of this guideline or unsure of how to satisfy it. This is another great opportunity for *HIV Legal Check-Up*. Volunteer attorneys can contact local medical facilities to advise them of this important CDC recommendation and to offer to provide *Check-Ups* in satisfaction of the CDC guideline. In some locations, it may be especially beneficial to conduct *Check-Ups* on-site at a medical facility (in a private setting, where confidentiality can be maintained). In other locations, it may be most effective to work with the facility to develop materials that can be provided to individuals when they are diagnosed as having HIV/AIDS. This may be as simple as a pamphlet with basic information on the rights of individuals with HIV/AIDS, and contact information for those individuals if they are interested in having a *Check-Up*.

C. COMMUNITY WITHOUT AIDS LEGAL SERVICES

Despite the continued spread of HIV/AIDS into communities around the country, urban and rural alike, many areas do not have any dedicated legal services available for people living with HIV/AIDS. Although the number of persons living with HIV/AIDS in these communities may be relatively small when compared to some urban settings (although this isn't always the case), these populations most certainly exist, are growing, and live in dire need of legal counsel; many having significant unmet legal needs, particularly in terms of the pronounced levels of stigma and discrimination often experienced in these settings. *HIV Legal Check-Up* is an especially important program in these communities. *Check-Up* can be readily structured to provide the critical link between people living with HIV/AIDS and the necessary legal services that may be otherwise difficult for them to locate. For instance, local attorneys can offer to provide *Check-Ups* and advertise this at local medical facilities, schools, government agencies, religious institutions, post offices, and other locations in the community.

For a number of reasons, it may not be possible or practical to establish a dedicated AIDS legal services organization in communities such as these. Indeed, the overall need may not justify the establishment of a fully-staffed program. However, this highlights an even more significant challenge: if someone living in such a community is diagnosed with HIV/AIDS, that person may have nowhere to turn for legal services, especially if local stigma and discrimination exists to an appreciable degree in the legal community, which, sadly, is not uncommon. *HIV Legal Check-Up* can be a terrific first line of services to provide to such individuals. Volunteer lawyers can help people to understand what their legal needs are, and can then aid them in securing referrals to the services that they need or in providing those services themselves. As with any community in which *Check-Up* is implemented, when issues involving HIV/AIDS arise for lawyers, they too are better informed and are better able to properly advise clients about the rights of and challenges confronted by people living with HIV/AIDS.

APPENDIX – HIV LEGAL CHECK-UP SAMPLE QUESTIONNAIRE

This Appendix includes a sample *HIV Legal Check-Up* questionnaire generously provided by the HIV/AIDS Legal Services Alliance (HALSA, Inc.). HALSA is a California-based agency; owing to variation in law from state to state, care should be taken in devising a similar questionnaire or checklist for another jurisdiction where the law -- particularly as it relates to HIV/AIDS -- may be quite different in scope and/or application.

HIV LEGAL CHECKUP QUESTIONNAIRE

Legal checkup counselors – Please review the following before beginning the client interview.

I. Objectives of the LCU – Counselors should inform clients about the goals of the LCU interview:

1. To introduce the client to HALSA’s legal services.
2. To identify and address current and potential legal problems.
3. To provide educational material relevant to the legal issues identified.

II. Obtain Eligibility Documents:

HALSA receives grants to provide free legal services. These grants require that HALSA assist only LA County residents who are diagnosed with HIV or AIDS and meet certain income guidelines. Therefore, counselors must ensure clients provide the following when arriving for a LCU interview:

1. Proof of HIV diagnosis:

Any document signed by a physician that clearly states the client’s diagnosis.

2. Proof of Income: See the supervisor if a client earns more than \$2,500 (gross) a month.

Acceptable documentation includes a pay stub, social security award letter or bank statement showing a social security direct deposit. If the client is a dependent, s/he should submit a letter from the person who provides the support. The client should sign a **Declaration of No or Low Income** if s/he has no income or cannot show proof of income.

3. Proof of LA County Residency: (copy)

The document must clearly show the client’s current residential address within Los Angeles County. Acceptable documents include a California DL/ID, utility bill, a bank statement, a letter sent to the client from a government agency (i.e., Social Security Administration, INS, EDD, IRS), letter from a housing facility if the client resides in a special housing unit. The client should sign a **Declaration of Residency** if s/he is homeless.

III. Brochures and Handouts:

Advise the client that the brochures and handouts provided at the LCU are for general use. The brochures and handouts should NOT be construed as legal advice. However, the information should assist the client in assessing his or her legal problem. Recommend to the client that he or she review the information before meeting with a HALSA advocate or other legal service provider.

IV. Confidentiality:

Remind the client that the LCU interview is confidential. To preserve the legal right to confidentiality, third parties – including family and friends, are NOT allowed to sit in during the interview.

JOSE “JOEY” ALARCON
HALSA Staff Attorney
HIV Legal Checkup Project
3550 Wilshire Blvd., Suite 750
Los Angeles, CA 90010
Tel: (213) 201-1647
Fax: (213) 201-1594

Date: _____

LCU Counselor: _____

Site: _____

MEDICAL INFORMATION

13. **Diagnosis:** HIV Asymptomatic HIV Symptomatic AIDS Asymptomatic AIDS Symptomatic

14. **How did you contract HIV?**

Male-male sexual contact IV drug use only Hom/Bisex & IDU
 Heterosexual contact Other: _____ Undetermined/Refused to Answer

15. **When were you diagnosed with HIV?** ____/____/____

16. **Have you been hospitalized in the last 12 months?** No Yes: (explain) _____.

17. **Are you currently diagnosed with other illnesses or experiencing other health issues?**

No Yes -- lipodystrophy hepatitis memory loss other: _____

18. **Any history of substance abuse or dependency problems?** No Yes: active w/in the last 12 months? ____
not w/in the last 12 months? ____

19. **Any history of a mental health condition?** No Yes: active w/in the last 12 months? ____
not w/in the last 12 months? ____

20. **Has your current legal problem affected your health in any way?**

No Yes-- how? stress depression other: _____

INITIAL NEEDS ASSESSMENT

21. **What other legal help have you required in the past?** _____

22. **Have you ever been incarcerated?** No Yes: w/in the last 12 months? _____
not w/in the last 12 months? _____

23. **Have you already met with a HALSA attorney?** No Yes: _____

24. **How did you hear about HALSA?** _____

25. **What are the legal issues or concerns you would like to discuss?**

INCOME, BENEFITS & INSURANCE

1. INCOME: What is your total monthly income (before taxes) from all sources?

Employment (before taxes)	\$ _____	General Relief (GR):	\$ _____
Soc. Sec. Disab. Insurance (SSDI)	\$ _____	AFDC/TANF:	\$ _____
Supplemental Sec. Income (SSI)	\$ _____	Food Stamps:	\$ _____
State Disability Insurance (SDI):	\$ _____	Veteran's Benefits (VA)	\$ _____
Private Disability Insurance/LTD:	\$ _____	Unemployment	\$ _____
Friends, Partner, Family:	\$ _____	Other:	\$ _____

TOTAL MONTHLY INCOME: \$ _____

(See the supervisor if client's income is more than \$2,500 –gross, a month)

2. MEDICAL COSTS: How do you pay for your medical care, including prescriptions?

Medicare Ability-to-Pay Plan (ATP) AIDS Drug Assistance Program (ADAP)
 Medicaid/Medi-Cal Private Insurance Health Insurance Premium Payment (HIP)
 Other? _____

Do you have a share of cost? N Y: \$ _____ Not Sure

3. PUBLIC BENEFITS: (i.e., State Disability, Social Security, Welfare, AFDC, GR)

NOT Receiving Benefits: Have you met with a benefits/insurance counselor?

No – (referral requested) No – (not interested) Yes

Receiving Benefits: Are you having problems with your public benefits? No Yes

If so: Is a felony or arrest causing suspension of your payments?
 Are you being charged with an overpayment? (Refer ct to Benefits Program)
 Are you trying to return to work and not lose benefits? (Refer ct to Work Services)

OTHER: (include dates): _____

4. PRIVATE INSURANCE: Do you have health, life, or disability insurance?

No Yes: Which? _____ provided by Individual Employer

If so: Have you had problems with the insurance? N Y: _____

HOUSING & LANDLORD/TENANT

1. What is your living arrangement? Homeowner Renter Other _____

2. RENTERS:

- a. TOTAL rent charged by landlord: \$ _____
- b. Amount you pay? \$ _____
- c. Roommates? None Yes: how many? _____

3. SUBSIDIZED HOUSING PROGRAMS:

Do you receive? Section 8 HOPWA Applied NONE Not Sure

IF NO or NOT Sure: Have you met with a Residential Services Counselor?
 No – (referral requested) No – (not interested) Yes

4. EVICTION:

Have you ever been evicted from an apartment? No Yes – when? _____ (Discuss Credit Reports.)

Are you behind with your rent? No Yes – (Ct may need an appt w/housing attorney.)

If behind with rent: Amount still owed: \$ _____

Have you received a: 3-day 30-day 60-day 90-day notice
 Summons/Complaint None

5. REPAIRS:

Is your landlord refusing to make needed repairs? No Yes- (Provide ct w/handouts)

IF YES, describe: roaches/rats heat Other _____

Have you notified the landlord **in writing** of the defect? N Y: When? _____

6. SECURITY DEPOSIT:

Have you had trouble obtaining some or all of your security deposit back from a prior landlord?

N Y: -- Date that you moved out: ___/___/___ Amount: \$ _____

Did you owe the landlord rent or money for repairs? N Y: \$ _____

7. Other Problems? N Y _____

DEBTOR/CREDITOR

1. CONSUMER DEBTS:

Are you having problems paying your debts? No Yes Periodically

IF YES: approximately how much do you owe? Credit cards: \$ _____
Car Loan: \$ _____
Medical Bills: \$ _____
Utilities: \$ _____
Other: _____ \$ _____

Date last paid: _____
Are creditors or collectors harassing you? N Y
Have you stopped using your credit cards? N Y

{If YES, provide the client with appropriate brochures}.

2. STUDENT LOANS:

Do you have delinquent student loans? No Yes

{If YES, provide client with a Student Loan handout and, if appropriate, a disability cancellation form}.

3. CREDIT REPORT:

Have you been denied an apartment or a job b/c of bad credit? No Yes
Have you been a victim of identity theft? No Yes
Do you have a money judgment entered against you? No Yes

{If YES: provide client with credit report brochures}.

4. Other debt concerns? N Y: _____

TAXES

1. Have you filed income tax returns for the last 3 years?

Yes Not Required No-- (requests assistance) No -- (will call when ready)

IF not filed: What years are needed? '02 '01 '00 Other: _____
Did you receive a W-2 form from your employer(s)? N Y
Were you paid in cash or as an independent contractor? N Y

2. Do you owe money to the IRS or FTB (State)? No Yes: Tax Year _____ Amount: \$ _____

3. For Immigrants: Do you have a valid social security number or tax ID number? No Yes Not Sure

4. Renters Assistance Claim: (for U.S. Citizens or Perm. Residents who are disabled or over 65 yrs old):
Have you applied for the California's Renters Assistance Claim? No Yes

5. Other tax problems: _____

EMPLOYMENT

1. ARE YOU CURRENTLY WORKING? No Yes Sporadically

NOT WORKING: Will you be looking for employment in the next three months? No Yes Maybe

If Yes, discuss the following with relation to the application process:

- Reasonable Accommodation *{Provide ct with handout}*
- Returning to work while on benefits *{Refer ct to Work Services Program}*

WORKING: Are you having problems at work? No Yes

If Yes: explain: _____

CONFIDENTIALITY

Explain to the client the meaning of his or her right to confidentiality:

- Your right not to tell others.
- Your right to stop someone from telling other people.
- Your right not to be tested without your consent.

1. Are you open about your HIV status? N Y: ___ family ___ friends ___ employer

2. In the past 12 months, has anyone disclosed your HIV status without your permission? N Y

3. Has anyone given you an HIV test without your permission? N Y

4. Other problems with HIV confidentiality? _____

DISCRIMINATION

Explain to the client the following:

- Discrimination laws protect those who are diagnosed with HIV or AIDS regardless of symptoms.
- Laws apply in employment, public accommodations, health care, and housing.

1. In the past 12 months, do you believe you have been discriminated because of your HIV-status?

N Y: Date of Incident(s): _____
Was the person aware of your HIV status? N Y

Describe incidents (include dates): _____

IMMIGRATION

Immigration & Naturalization Service (INS) was replaced by the Bureau of Citizenship & Immigration Services (BCIS)

1. Are you a U.S. citizen? No Yes

If Not a citizen: What is your current immigration status? Undocumented Temp Protected Status (TPS)
 Legal Permanent Resident (LPR) Asylum Other: _____

Country of Birth: _____

Have you EVER been arrested, held, detained or deported by the U.S. authorities -- (police, INS, border patrol)?

NEVER YES: Explain (include dates) _____

Have you filed your income tax returns for the last 5 years? Not All Not Required YES

Have you been a victim of fraud by someone who claimed to be an immigration attorney or consultant?

No Yes: explain: _____

In your country of origin, were you victimized or discriminated against b/c of HIV?

No Yes: explain: _____

2. Legal permanent residents seeking citizenship: Date you became a legal permanent resident? _____

OR

3. Immigrants seeking legal status:

Date first entered the U.S.: ____/____/____

Did you arrive with a Visa (tourist/student)? NO YES: _____

Did you exit the country since arriving? NO YES: _____

Family who are citizens or residents? NONE YES: _____

Have you received public benefits? NO YES: _____

Prior applications with the BCIS? NONE YES: _____

(previously known as INS)?

If yes, did you include an HIV waiver? NO YES

OTHER LEGAL MATTERS -- (Non-HALSA Referrals)

1. Do you have other legal issues you would like to discuss? No Yes

IF YES: Child Support/Custody/Divorce Traffic/Parking Ticket
 Criminal law issues Domestic Violence
 Personal Injury Medical Malpractice
 OTHER: _____

LEGAL CHECKUP COMPLETION -- SUMMARY

1. Outside Referrals:

- | | |
|--|--|
| <input type="checkbox"/> Benefits Program at APLA & ASC | <input type="checkbox"/> Family Law: divorce, custody, support |
| <input type="checkbox"/> Consumer: bankruptcy, student loans | <input type="checkbox"/> Residential Services at APLA |
| <input type="checkbox"/> Criminal Matter | <input type="checkbox"/> Work Services Program at APLA |
- Other: _____

2. HALSA Referrals:

- | | | |
|--|--|--|
| <input type="checkbox"/> Benefits Appeal | <input type="checkbox"/> Employment | <input type="checkbox"/> Jnt. Guardianship |
| <input type="checkbox"/> Confidentiality | <input type="checkbox"/> Housing and Landlord/Tenant | <input type="checkbox"/> Taxes |
| <input type="checkbox"/> Discrimination | <input type="checkbox"/> Immigrant's Rights | <input type="checkbox"/> Testamentary Docs |

3. Advice and Counseling.

Briefly list all of the specific questions for which you provided advice, and the advice provided:

Ex: Client asked about taking time off to see the doctor - advised her about reasonable accommodations.

3. Moot Issues.

List issues that would have been referrals except the client does not wish to proceed, the statute of limitations has run, or there is some other barrier to pursuing the matter:

Ex: Client was discriminated against by her previous employer, but incident occurred five years ago.
