ADDRESSING METHAMPHETAMINE ISSUES IN TRIBAL HOUSING

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Does Your TDHE Need to Address Meth?

• Is meth use a problem in your community or reservation?
  • Drug use/arrests
  • Contamination in Units

• Create a policy or rule that will work for your Tribe and your TDHE
  • One size does not fit all
  • Policy must be a living document that can be revised if something is not working
  • Use samples as starting point, but not all provisions may work for every TDHE.
Tribal or Other Laws

- Which laws apply?
  - Is the property on trust land or fee land?
    - Policies for properties on fee land may need to be different from properties on trust land.

- Does the jurisdiction have its own meth cleanup laws?
  - Cleanup threshold and requirements
  - Habitability

- Does the jurisdiction require certified testing or certified cleanup?

- Will another agency (for example: Dept. of Health, or Environment) be involved if a Unit tests positive?
Many Tribes Do Not Have Applicable Law

- Many tribes do not have any methamphetamine law in their current tribal codes, including:
  - Cleanup requirements
  - Habitability requirements
  - Applicable Landlord/Tenant laws

- In these situation the TDHE may be the building the first meth program or policy for their Tribe.
  - Many TDHEs are creating meth programs/policies from the ground up.
METH TESTING

• Testing procedures
  • Who conducts tests?
    • Contractors
    • TDHE staff
      • Training and certifications requirements?
      • Maintenance, Occupancy or a new TDHE Department?

• Testing procedures may be set by law

• Who pays for the test?
METH TESTING

• When is a test done?
  • Probable cause?
    • How will your TDHE determine when probable cause exists?
  • As part of regular inspections?
  • Random testing?
  • When a unit is vacant?
  • Will you test when needed or all units at once?
Baseline Testing

- Highly recommended
- Shows that a Unit is clean when a Tenant moves in
  - Document clean Unit with an addendum to Lease
- Easier to prove current tenant responsibility
  - “It must have been there when I moved in.”
- Some judges/jurisdictions may not grant eviction if the Unit was not clean at move-in.
Safety Considerations

- If staff will be conducting testing or cleanup, how will they be protected from negative impacts of meth?

- Personal Protective Equipment
- When testing occurs
- Preventing contamination of other areas
- Employee health concerns
- Drug testing issues
Group Exercise One
To Test or Not to Test
Cleanup and Mitigation

- How soon will the Unit be decontaminated?
  - Is there funding available for immediate cleanup?
  - If not, is a plan in place?
  - How are cleanup costs budgeted?

- How is the Unit protected while it is awaiting cleanup?
  - Trespassers, squatters, party house
Cleanup and Mitigation

• Cleanup requirements
  • Who will cleanup/decontaminate?
    • Always check local law to determine if any certifications are required.
    • Some jurisdictions require that only certified companies are used.
  • Staff
    • Will staff have necessary training to properly decontaminate?
    • How much time will it take staff?
  • Maintenance? Meth Cleanup Department?
  • Certified Cleanup Company
  • Which is more cost effective?
Cleanup and Mitigation

- EPA’s Voluntary Guidelines for Methamphetamine Laboratory Cleanup.

- How will the TDHE determine when a Unit has been properly decontaminated?
  - Follow-up testing to a certain level is recommended
  - Follow-up testing may be required in some jurisdictions

- Is the Tenant still living in the Unit before it will be cleaned?
  - Temporary displacement?
  - Who pays for their lodging in the meantime?
Cleanup and Tenant Issues

- Will Tenant Possessions be tested?
  - Some jurisdictions will require testing of possessions

- Tenant Possessions when contaminated?
  - How will TDHE work with Tenant to dispose of contaminated possessions?
  - Any liability for the possessions?

- Disposal Requirements?
  - In most cases, cannot throw out with normal refuse
Policy Development Continued

- Describe TDHE strategy and requirements
  - For TDHE
    - Testing
    - Cleanup
    - Enforcement
  - For Tenants
    - Prohibition Against Meth
    - Testing/Inspections
    - Accountability
Setting Threshold

• Must set a contamination threshold for cleanup and enforcement purposes
  • No standard threshold amount
  • Number differs by state, county, and city
    • 2.0, 1.5, 1.0 µg/100 cm² (micrograms per 100 square centimeters) for example
    • Number also used to determine when a unit is deemed safe to re-inhabit (may not always be 0)
    • 0 µg/100 cm² may not be financially/realistically feasible.
When Meth Contamination is Found

Some Questions to Consider

• Does the Unit need to be decontaminated?

• What happens to the Tenants?
  • Second chance?
  • Eviction?

• Who pays for cleanup and other costs?

• Does the TDHE have to notify anyone when a Unit is found contaminated with meth?
  • How soon does TDHE notify Tenant of contamination?
Tenant Accountability

- Will TDHE hold tenant responsible for meth contamination?
  - Is there sufficient proof to show Tenant is responsible?
  - Other Tenant History
  - Was the Unit clean when the Tenant moved in?
  - Was there police activity or arrests at the Unit?
Second Chance?

• Pros
  • Prevents homelessness
  • Prevents moving the problem to another Unit
  • Allows the TDHE to maintain relationship if costs are owed
  • Keeps families together
  • Political Issues
Second Chance?

• Put any second chance agreements in writing
  • Can be Addendum to Lease
  • Once the Unit is decontaminated, show clean status in writing
  • Can document any costs owed TDHE
  • Failure to comply consequences
  • Insert requirement for random testing for at least one year
Second Chance?

• **Cons**
  • Risks repeated contamination of the Unit if meth use continues
  • User may not change-Enabling?
  • May show that TDHE isn’t serious about meth prohibition

• **Uniformity**
  • Hard to treat all cases the same, but tenants eventually know who a TDHE works with and who they evict
Eviction

• Entire family or just responsible party, if known?

• How long will an eviction process take?
  • Safety considerations
  • FED
  • Restraining Order

• Will the Court grant damages awards for contamination costs?
  • How will the TDHE collect after the Tenant is evicted?
  • What evidence will the TDHE have to show costs to the Court?
Evidence Issues

- How strong is the evidence?
  - What is the history or practice at TDHE Tribal Court or other Court?
  - Police Reports or Testimony
  - Meth Test alone?
  - How do you tie the meth contamination to the Tenant?
- Lease violations
  - Drug-related criminal activity
  - Damage to unit
Notification

- Reporting test results to law enforcement?
  - What level of contamination?
  - Will law enforcement be able to do anything, if needed?

- Reporting test result to Child Protection or Elder Services?
  - Is there a child or elder at risk?
  - Small children and elders may be more susceptible to health risks from meth contamination.
  - Are there therapy/rehab resources available?
Other Policy Considerations

- Some jurisdictions require that a landlord disclose to future tenants when a unit was previously contaminated with meth.

- Once a unit tests positive the TDHE has a responsibility to make the unit safe and habitable, including moving occupants out as soon as possible.

- How do you prove a tenant is responsible for meth contamination if the unit hasn’t tested clear at occupancy and/or there isn’t a police report or other evidence to tie the tenant to the contamination?
  - Some courts require evidence that meth contamination is caused by the tenant.
Group Exercise Two
Enforcement
TDHE Examples

- Cheyenne River Housing Authority and Sicangu Wicoti Awanyakapi (Rosebud) have all implemented meth policies and procedures that share some common elements:
  - Created and implemented comprehensive policy and cleanup manual to address meth in housing units.
    - Includes protocols for testing, enforcement and cleanup.
  - Created meth remediation team or department within TDHE.
  - Adopted EPA’s Voluntary Guidelines for Methamphetamine Laboratory Cleanup.
TDHE Examples

- Also implemented a procedure to address meth in housing units.
  - Prohibits all meth use, manufacture, sale or distribution in or near any TDHE property.
  - Prohibits tenants from engaging in any use, manufacture, sale or distribution at or away from the unit.
  - Requires TDHE to conduct a scheduled testing of units.
  - Lease termination when a unit tests positive above a certain level.
  - Working with tenants to remediate when a unit tests positive below the “move-out” level.
TDHE Examples

- Numerous houses have been tested positive for meth since program was implemented.
- Some programs have been in place for 3-4 years.
- TDHEs are working with some tenants and giving them one more opportunity to remain tenants.
- Tribal courts have been generally supportive/informed on the cases that have come before them.
- Also conducting ongoing outreach with tenants to educate tenants on tribal law, housing policies and possible consequences when meth is found in a unit.
- Based on current circumstances, the TDHEs have designated a significant part of their budget for meth remediation-the challenge of where to find the funding is huge.
Tribes Fighting Meth

- Many tribes creating stricter laws to address meth problems
- Banishment/Disenrollment Laws
- For non-tribal and tribal members
- Even with strong laws in place enforcement is still a major issue for some tribes due to current lack of law enforcement resources
  - Not enough police officers
  - Not enough funding
  - Not enough prosecutorial or court resources
  - Not enough jail/rehab resources
The Lease

• Confirm that your current lease contains language that will cover your meth policy/program:
  • Testing/Inspection Language
  • Prohibition of drug-related criminal activity or prohibition of meth
  • Consequences for violations
Other Policies

• Make sure all TDHE policy and rule language is uniform:
  • Management and Occupancy
  • Maintenance
  • Admissions
  • Grievance Policy
Tenant Outreach & Training

- New/revised policies or rules
- Tenant notification
- Notify community and Tribe
  - Radio
  - By Mail
- Training
  - Special training for tenants
  - During recertification
Meth in Indian Country

• TDHEs working alone cannot solve this problem.

• There are three areas that tribes must address cooperatively to save their communities:
  • Housing and housing stock
  • Law enforcement and Court resources
  • Treatment and rehabilitation (without this, the problem simply moves from place-to-place)

• It has been said that there is no way to evict or arrest your way out of this problem.

• This is an incredible drain on tribal resources that are already severely limited.
Funding Challenges

- Current NAHASDA Block Grant funding shrinking and not sufficient.
- National crisis outside of Indian Country in many other communities.
- Both UNAHA and Great Plains Tribal Chairman’s Association have passed resolutions asking Congress to find $100 million in additional funds to address mitigation of methamphetamines in Indian housing units and to strengthen law enforcement and Court resources.
- COPS-Community Oriented Policing Services also seeing reduction in funding.
Pending Legislation and Other Funding

- **Mitigating Meth Act S.2270 (Sen. Daines R-MT)**
- **Opioid Response Enhancement Act S. 2437 (Sen. Baldwin D-WI)**
  - Would make some funding available to tribes in program to combat opioid epidemic
- **FY 2018 Appropriations Bill**
  - 100 Million in addition to regular IHBG grant-
    Need and Capacity
  - No details yet
Indian Housing Challenges
Great Needs

- In many cases tribes do not have public health departments for monitoring or adequate laws in place regarding clean up requirements or safe thresholds.
- TDHEs often lead the way for their communities in developing standards, policy and procedures.
- Essential to develop internal policy or rules for how to address meth in housing units.
- Must work with Tribal governments to strengthen laws and advocate for enforcement.
Other Political Considerations

- Will the tribal government support TDHE efforts and policies?
- Can a THDE become “too” successful in addressing meth in housing units?
- Will the tribal government remain supportive even if numerous tenants are evicted from units?