

/\* TEXAS, administrative code, part 3 of 3. \*/

#### 98.62. Definitions

The following words and terms, when used in these sections shall have the following meanings, unless the context indicates otherwise.

Act-Human Immunodeficiency Virus Services

Act, Texas Civil Statutes, Article 4410b-4 (Chapter 1195, Acts of the 71st Legislature, Regular Session, 1989 (Senate Bill Number 959)).

AIDS-Acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

Applicant-A nonprofit community organization or other entity that applies to the Texas Department of Health for approval to become a provider.

Board-The Texas Board of Health.

Commissioner-The commissioner of health.

Communicable Disease Prevention and Control Act-Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

Department-The Texas Department of Health.

Education-A program to provide AIDS/HIV education, prevention and/or risk reduction information to individuals or groups.

HIV-Human immunodeficiency virus, as defined by the Centers for Disease Control of the United States Public Health Service.

Person-An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Program-The HIV Education, Prevention, Risk

Reduction Grant Program, created by the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, Regular Session, 1989 (Senate Bill Number 959)).

Provider-A person that has been approved by the department and that has entered into a contract with the department to deliver education, prevention, and risk reduction programs.

Region-Public health region of the department. Request for proposal (RFP)-A solicitation providing guidance and instruction issued by the department to potential providers interested in submitting an application to deliver an education program to carry out the purposes of the Act, Article 2.

#### 98.63. Forms

Forms which have been developed by the Texas Department of Health for use in the HIV Program will be provided to applicants and providers as necessary.

#### 98.64. Funds

The Texas Board of Health may seek, receive, and expend any funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer the Human Immunodeficiency Virus Services Act (Act), except as provided by other law.

#### 98.65. Nondiscrimination

The Texas Department of Health operates in compliance with the Civil Rights Act of 1964, Public Law 88-352, Title VI, and Title 45, Code of Federal Regulations, Part 80, so that no person will be excluded from participation, or otherwise subjected to discrimination on the grounds of race, color, national origin, or handicapping conditions.

#### 98.66. General Program Requirements

(a) As authorized by the Human Immunodeficiency Virus Services Act (Act), Texas Civil Statutes, Article 4419b-4 (Chapter 1195, Acts of the 71st Legislature, 1989 (Senate Bill Number 959)), the Texas Board of Health, in these sections, has established the HIV Program in the Texas Department of Health (department) to provide for the delivery of education programs in local communities.

(b) The department through the grant process shall endeavor to provide for the delivery of HIV education programs to:

- (1) coordinate the use of federal, local, and private funds;
- (2) encourage community-based service provision;
- (3) address needs that are not met by other sources of funding;
- (4) provide funding as extensively as possible across regions of the state in amounts that reflect regional needs;
- (5) encourage cooperation among local providers;
- (6) prevent unnecessary duplication of HIV education programs within a community;
- (7) complement existing HIV education programs in a community;
- (8) provide HIV education programs for populations engaging in behaviors conducive to HIV transmission;
- (9) initiate needed HIV education programs where none exist; and
- (10) promote early intervention and treatment of persons with HIV infection.

#### 98.67. State HIV Education, Prevention, and Risk Reduction Advisory Committee

(a) Purpose. The purpose of the State HIV Education, Prevention, and Risk Reduction Advisory Committee (committee) is to assist the Texas Board of Health (board) and the Texas Department of Health (department) in the development of procedures and guidelines for the HIV Education Grant Program to provide HIV

education, prevention, and risk reduction services at the community level.

(b) Committee responsibilities. The responsibilities of the committee include the:

- (1) evaluation of existing education programs and unmet needs;
- (2) review of the goals and targets of the request for proposal (RFP) application/renewal packets;
- (3) evaluation of ongoing program efforts;
- (4) definition of both short-range and long-range goals and objectives for the AIDS/HIV education program; and
- (5) development of review criteria and standards for AIDS/HIV education program.

(c) Committee recommendations. The department shall consider committee recommendations during the development of provider contracts, as required in 98.82 of this title (relating to Provider Application-Selection-Contract Process).

(d) Membership. The board shall appoint a 15-member statewide AIDS/HIV Education, Prevention, and Risk Reduction Advisory Committee consisting of a:

- (1) community-based youth outreach program representative with HIV/AIDS experience;
- (2) Texas Youth Commission-local correctional facility representative with HIV/AIDS experience;
- (3) person with HIV/AIDS;
- (4) community-based drug treatment/outreach program representative with HIV/AIDS experience;
- (5) family planning program representative with HIV/AIDS experience;
- (6) local health department representative with HIV/AIDS experience;
- (7) community-based program to reach gay/bisexual men representative with HIV/AIDS experience;
- (8) an individual that is currently working with the disabled in matters of HIV/AIDS education;
- (9) member of the religious community (clergy) with HIV/AIDS experience;
- (10) representative with HIV/AIDS experience from a community with a population of less than 30,000 which is not served by a major metropolitan area;
- (11) PTA representative with HIV/AIDS experience;
- (12) parent;
- (13) teacher/principal HIV educator, HIV counselor with HIV/AIDS experience;
- (14) community-based organization to reach Hispanics representative with HIV/AIDS experience; and
- (15) community-based organization to reach African Americans representative with HIV/AIDS experience.

(e) Term. The members shall serve staggered three-year terms with five members' terms expiring each year in January. Initial appointments for one, two, and three-year terms will be determined by lottery. Members may be reappointed by the board to consecutive terms.

(f) Officers. The officers of the committee shall consist of a chairperson and a vice chairperson and shall be selected at the committee's first regular meeting each year by the committee's membership. Officers shall serve one-year terms and shall be eligible for reelection for one additional term. The chairperson shall be the presiding officer of the committee. The vice chairperson shall assume the authority and duties of the chairperson in his or her absence.

(g) Subcommittees. The subcommittees of the committee shall be ad hoc, shall be appointed from the membership by the chairperson, and shall assume such powers and responsibilities as delegated to them by the chairperson.

(h) Meetings.

(1) Open meeting requirements. The committee shall post and hold all meetings in accordance with the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(2) Regular meetings. The full committee shall meet at least two times per year. Notice of time, date, place, and purpose of regular meetings shall be provided to the members, by mail or telephone or both, at least seven days in advance of each meeting.

(3) Special meetings. Special meetings of the committee shall be held as needed and called by the chairperson. Notice of the time, date, place, and purpose of special meetings shall be provided to the members, by mail or telephone or both, at least seven days in advance of each meeting.

(4) Quorum. A majority of the committee's members constitutes a quorum for the transaction of business at any meeting. A majority is defined as more than one-half of the committee's membership. The committee may act only by majority vote of its members present and voting. Each member shall be entitled to one vote.

(5) Attendance. A record of attendance at each meeting shall be made. The board shall be notified of members who miss two consecutive meetings. A third consecutive absence from a regular meeting shall be sufficient grounds for membership termination by the board.

(6) Parliamentary procedures. Parliamentary procedures for all committee or subcommittee meetings are conducted in accordance with the latest edition of Roberts Rules of Order, except that the chairperson may vote on any action as any other member of the committee.

(7) Conflict of interest. Any committee member having a

potential conflict of interest between his/her professional affiliations and subject matter presented to the committee shall refrain from chairing the discussion and/or voting on the issue.

(8) Minutes. Minutes of all committee meetings will be prepared and transmitted to the membership for their review prior to subsequent meetings.

(9) Public participation. All requests from the public to participate in the committee meetings shall be submitted to the committee chairperson. The agenda for each committee meeting shall include one or more items providing for public participation. The chairperson may limit, as necessary, the time for each spokesperson appearing before the committee. Written comments are encouraged and may be submitted to the committee for their consideration. The committee on its initiative may ask for public participation as needed and requested. Designation of time for public participation will be included as an agenda item.

#### 98.68. HIV Program Review

(a) HIV Program (program) review activities will be accomplished through monitoring systems developed to ensure the delivery of appropriate AIDS/ HIV education programs.

(b) For economies of scale, and with the consent of the commissioner of health, the program may contract for concurrent or retrospective program reviews.

(c) The Texas Department of Health (department) will establish a program review system to evaluate the delivery of education programs. The program review system will allow for technical assistance to the providers.

(d) The department will require providers to report to the department:

(1) the number and type of individuals reached by an education program;

(2) fiscal and financial management reports of expenditures;

(3) program accomplishments;

(4) copies of all materials the organization has printed or distributed related to HIV infection;

(5) a record of the votes of the local program materials review committee on each item; and

(6) a report on the networking and coordination of services with other providers.

(e) The department may require other program related data; however, the provider will be given 60 days advance notice prior to the end of the contract term.

(f) The provider must comply with the most current version of the document entitled "Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Education Sessions in Centers for Disease Control Assistance

Programs" and its preface when choosing program materials. The department adopts this document by reference. Copies may be reviewed at the Texas Department of Health, Bureau of HIV and STD Control, Room G-308, 1100 West 49th Street, Austin.

98.69. REPEALED effective December 31,

#### AIDS/HIV EDUCATION PROVIDERS

98.81. Who May Apply To Become a Provider

(a) To become a provider, a person must be a governmental, public, or private nonprofit entity located within the state of Texas, including:

- (1) city or county health departments or districts;
- (2) community-based organizations; and
- (3) public or private hospitals.

(b) An individual may not become a provider.

#### SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS

85.031. State Grant Program to Community Organizations

The department shall establish and administer a state grant program to nonprofit community organizations for:

- (1) HIV education, prevention, and risk reduction programs; and
- (2) treatment, health, and social service programs for persons with HIV infection.

85.032. Rules; Program Structure

(a) The board may adopt rules relating to:

- (1) the services that may be furnished under the program;
- (2) a system of priorities regarding the types of services provided, geographic areas covered, or classes of individuals or communities targeted for services under the program; and
- (3) a process for resolving conflicts between the department and a pro-gram receiving money under this subchapter.

(b) Board or department actions relating to service, geographic, and other priorities shall be based on the set of priorities and guidelines established under this section.

(c) In structuring the program and adopting rules, the department and the board shall attempt to:

- (1) coordinate the use of federal, local, and private funds;
- (2) encourage the provision of community-based services;
- (3) address needs that are not met by other sources of funding;
- (4) provide funding as extensively as possible across the regions of the state in amounts that reflect regional needs; and
- (5) encourage cooperation among local service providers.

85.033. Coordination of Services

(a) To prevent unnecessary duplication of services, the board and the department shall seek to coordinate the services provided by eligible programs under Subchapters A through G with existing federal, state, and local programs.

(b) The department shall consult with the Texas Department of Human Services to ensure that programs funded under this subchapter complement and do not unnecessarily duplicate services provided through the Texas Department of Human Services.

#### 85.034. Application Procedures and Eligibility Guidelines

(a) The department shall establish application procedures and eligibility guidelines for the state grants under this subchapter.

(b) Application procedures must include regional public hearings after reasonable notice in the region in which the community organization is based before awarding an initial grant or grants totalling more than \$25,000 annually.

(c) Before the 10th day before the date of the public hearing, notice shall be given to each state representative and state senator who represents any part of the region in which any part of the grant will be expended.

#### 85.035. Applicant Information

An applicant for a state grant under this subchapter shall submit to the department for approval:

(1) a description of the objectives established by the applicant for the conduct of the program;

(2) documentation that the applicant has consulted with appropriate local officials, community groups, and individuals with expertise in HIV education and treatment and knowledge of the needs of the population to be served;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if the objectives are met; and

(4) any other information requested by the department.

#### 85.036. Awarding of Grants

(a) In awarding grants for education programs under this subchapter, the department shall give special consideration to nonprofit community organizations whose primary purpose is serving persons younger than 18 years of age.

(b) In awarding grants for treatment, health, and social services, the department shall endeavor to distribute grants in a manner that prevents unnecessary duplication of services within a community.

(c) In awarding grants for education programs, the department shall endeavor to complement existing education programs in a

community, to prevent unnecessary duplication of services within a community, to provide HIV education programs for populations engaging in behaviors conducive to HIV transmission, to initiate needed HIV education programs where none exist, and to promote early intervention and treatment of persons with HIV infection.

#### 85.037. Restrictions on Grants

(a) The department may not award a grant to an entity or community organization that advocates or promotes conduct that violates state law.

(b) This section does not prohibit the award of a grant to an entity or community organization that provides accurate information about ways to reduce the risk of exposure to or transmission of HIV.

#### 85.038. Restrictions on Funds

(a) The department may not use more than five percent of the funds appropriated for the grant program to employ sufficient staff to review and process grant applications, monitor and evaluate the effectiveness of funded programs, and provide technical assistance to grantees.

(b) Not more than one-third of the funds available under this subchapter may be used for HIV education, prevention, and risk reduction.

#### 85.039. Information Provided by Funded Program

(a) A program funded with a grant under this subchapter shall provide information and educational materials that are accurate, comprehensive, and consistent with current findings of the United States Public Health Service.

(b) Information and educational materials developed with a grant awarded under this subchapter must contain materials and be presented in a manner that is specifically directed to the group for which the materials are intended.

#### 85.040. Evaluation of Funded Programs

(a) The department shall develop evaluation criteria to document effectiveness, unit-of-service costs, and number of volunteers used in programs funded with grants under this subchapter.

(b) An organization that receives funding under the program shall:

(1) collect and maintain relevant data as required by the department; and

(2) submit to the department copies of all material the organization has printed or distributed relating to HIV infection.

(c) The department shall provide prompt assistance to grantees



in obtaining materials and skills necessary to collect and report the data required under this section.

#### 85.041. Records and Reports

(a) The department shall require each program receiving a grant under this subchapter to maintain records and information specified by the department.

(b) The board may adopt rules relating to the information a program is required to report to the department and shall adopt procedures and forms for reporting the information to prevent unnecessary and duplicative reporting of data.

(c) The department shall review records, information, and reports prepared by programs funded under this subchapter. Before December 1 of each year, the department shall prepare a report that is available to the public and that summarizes data regarding the type, level, quality, and cost-effectiveness of services provided under this subchapter.

#### 85.042. Financial Records

(a) The department shall review periodically the financial records of a program funded with a grant under this subchapter.

(b) As a condition of accepting a grant under this subchapter, a community organization must allow the department to periodically review the financial records of that organization.

#### 85.043. Due Process

The department may provide a due process hearing procedure for the resolution of conflicts between the department and a program funded with a state grant under this subchapter.

#### 85.044. Advisory Committee

The board may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

### SUBCHAPTER C. HIV MEDICATION PROGRAM

#### 85.061. HIV Medication Program

(a) The Texas HIV medication program is established in the department.

(b) The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions.

#### 85.062. Eligibility

- (a) To be eligible for the program, an individual:
- (1) must not be eligible for Medicaid benefits;
  - (2) must meet financial eligibility criteria set by board rule;
  - (3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and
  - (4) must be diagnosed by a licensed physician as having AIDS or an HIV related condition or illness of at least the minimal severity set by the board.
- (b) The department shall give priority to participation in the program to eligible individuals younger than 18 years of age.

#### 85.063. Procedures and Eligibility Guidelines

The board by rule shall establish:

- (1) application and distribution procedures;
- (2) eligibility guidelines to ensure the most appropriate distribution of funds available each year; and
- (3) appellate procedures to resolve any eligibility or funding conflicts.

#### 85.064. Funding

(a) The department may accept and use local, state, and federal funds and private donations to fund the program.

(b) State, local, and private funds may be used to qualify for federal matching funds if federal funding becomes available.

(c) A hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization may participate in the program by sending funds to the department for the purpose of providing assistance to clients for the purchase of HIV medication. A hospital district may send funds obtained from any source, including taxes levied by the district.

(d) The department shall deposit money received under this section in the state treasury to the credit of the HIV medication fund and to the credit of a special account in that fund that shall be established for each entity sending funds under this section.

(e) Funds received from a hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization under this section may be used only to provide assistance to clients of that entity. The funds may be supplemented with other funds available for the purpose of the program.

(f) Funds appropriated by the General Appropriations Act may not be transferred from other line items for the program.

#### 85.065. Sliding Fee Scale to Purchase Medication

The department may institute a sliding fee scale to help eligible

HIV infected individuals purchase medications under the program.

#### 85.066. Advisory Committee

The board may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

### SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING

#### 85.081. Model Protocols for Counseling and Testing

(a) The department shall develop model protocols for counseling and testing related to HIV infection. The protocols shall be made available to health care providers on request.

(b) A testing program shall adopt and comply with the model protocols developed by the department under Subsection (a).

#### 85.082. Department Voluntary Testing Programs

(a) The department shall establish voluntary HIV testing programs in each public health region to make confidential counseling and testing available. The department shall complete contact tracing after a confirmed positive test.

(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.

(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who is injured by an intentional violation of Subsection (c) may bring a civil action for damages and may recover for each violation from a person who violates Subsection

(c):

(1) \$1,000 or actual damages, whichever is greater; and

(2) reasonable attorney fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

#### 85.083. Registration of Testing Program

(a) A person may not advertise or represent to the public that the person conducts a testing program for AIDS, HIV infection, or related conditions without registering with the department.

(b) A hospital licensed under Chapter 241 or a physician licensed under the Medical Practice Act is not required to be registered under this section unless the hospital or physician advertises or represents to the public that the hospital or physician conducts or specializes in testing programs for AIDS, HIV infection, or related conditions.

(c) The department may assess and collect a registration fee in an amount that does not exceed the estimated costs of administering this section.

(d) A person who violates Subsection (a) is liable for a civil penalty of \$1,000 for each day of a continuing violation.

#### 85.084. For-Profit Testing Program

A testing program that operates for profit, that advertises or represents to the public that it conducts or specializes in testing programs, and that is required to register under Section 85.083 shall:

- (1) obtain the informed consent of the person to be tested before conducting the test; and
- (2) provide an itemized statement of charges to the person tested or counseled.

#### 85.085. Physician Supervision of Medical Care

A licensed physician shall supervise any medical care or procedure provided under a testing program.

#### 85.086. Reports

A testing program shall report test results for HIV infection in the manner provided by Chapter 81 (Communicable Disease Prevention and Control Act).

#### 85.087. Training of Counselors

(a) The department shall develop and offer a training course for persons providing HIV counseling. The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(b) The department shall maintain a registry of persons who successfully complete the training course.

(c) The department may charge a fee for the course to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the department.

(d) The board shall set the fee in an amount that is reasonable and necessary to cover the costs of providing the course.

(e) The department may contract for the training of counselors.

#### 85.088. State-Funded Health Clinics

(a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall:

- (1) make available to patients and clients information and educational materials concerning the prevention of HIV infection; and

(2) provide voluntary, anonymous, and affordable counseling and testing programs concerning HIV infection or provide referrals to those programs.

(b) Information provided under Subsection (a)(1) shall be routinely incorporated into patient education and counseling in clinics specializing in sexually transmitted diseases and women's reproductive health.

#### 85.089. Disciplinary Action

This subchapter does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this subchapter.

### SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS

#### 85.111. Education of State Employees

(a) Each state agency annually shall provide to each state employee an educational pamphlet about:

- (1) methods of transmission and prevention of HIV infection;
  - (2) state laws relating to the transmission of HIV infection;
- and

(3) conduct that may result in the transmission of HIV infection.

(b) The educational pamphlet shall be provided to a newly hired state employee on the first day of employment.

(c) The educational pamphlet shall be based on the model developed by the department and shall include the workplace guidelines adopted by the state -agency.

(d) The department shall prepare and distribute to each state agency a model informational pamphlet that can be reproduced by each state agency to + meet the requirements of this section.

#### 85.112. Workplace Guidelines

(a) Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection.

(b) The workplace guidelines shall incorporate at a minimum the model workplace guidelines developed by the department.

#### 85.113. Workplace Guidelines for State Contractors

An entity that contracts with or is funded by any of the following state agencies to operate a program involving direct client contact shall adopt and implement workplace guidelines similar to the guidelines adopted by the agency that funds or contracts with the entity:

- (1) the Texas Commission on Alcohol and Drug Abuse;
- (2) the Texas Commission for the Blind;
- (3) the Texas Commission for the Deaf;'

- (4) the Texas Juvenile Probation Commission;
- (5) the Texas Department of Criminal Justice;
- (6) the Texas Youth Commission;
- (7) the department;
- (8) the Texas Department of Human Services;
- (9) the Texas Department of Mental Health and Mental Retardation; and
- (10) the Texas Rehabilitation Commission.

85.114. Education of Certain Clients, Inmates, Patients, and Residents

- (a) Each state agency listed in Section 85.113 shall routinely make available HIV education for clients, inmates, patients, and residents of treatment, educational, correctional, or residential facilities under the agency's jurisdiction.
- (b) Education available under this section shall be based on the model education program developed by the department and tailored to the cultural, educational, language, and developmental needs of the clients, inmates, patients, or residents, including the use of Braille or telecommunication devices for the deaf.

85.115. Confidentiality Guidelines

- (a) Each state agency shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the agency and for clients, inmates, patients, and residents served by the agency.
- (b) Each entity that receives funds from a state agency for residential or direct client services or programs shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the entity and for clients, inmates, patients, and residents served by the entity.
- (c) The confidentiality guidelines shall be consistent with guidelines published by the department and with state and federal law and regulations.
- (d) An entity that does not adopt confidentiality guidelines as required by Subsection (b) is not eligible to receive state funds until the guidelines are developed and implemented.

85.116. Testing and Counseling for State Employees Exposed to HIV Infection on the Job

- (a) On an employee's request, a state agency shall pay the costs of testing and counseling an employee of that agency concerning HIV infection if:
  - (1) the employee documents to the agency's satisfaction that the employee may have been exposed to HIV while performing duties of employment with that agency; and

(2) the employee was exposed to HIV in a manner that the United States Public Health Service has determined is capable of transmitting HIV.

(b) The board by rule shall prescribe the criteria that constitute possible exposure to HIV under this section. The criteria must be based on activities the United States Public Health Service determines pose a risk of HIV infection.

(c) For the purpose of qualifying for workers' compensation or any other similar benefits or compensation, an employee who claims a possible workrelated exposure to HIV infection must provide the employer with a written statement of the date and circumstances of the exposure and document that, within 10 days after the date of the exposure, the employee had a test result that indicated an absence of HIV infection.

(d) The cost of a state employee's testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The director of the workers' compensation division of the attorney general's office shall adopt rules necessary to administer this subsection.

(e) Counseling or a test conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.

(f) A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested.

#### SUBCHAPTER F. DEMONSTRATION PROJECTS ON NURSING CARE

##### 85.131. Research on Nursing Care

To ensure a continuum of nursing care for persons with AIDS or HIV infection and related conditions who require long-term nursing care but do not require hospitalization except for acute exacerbations of their condition, the Texas Department of Human Services shall develop one or more demonstration projects to research the cost and need for services that are appropriate to provide the special care necessary for those persons and for the specific medical complications resulting from AIDS or HIV infection.

##### 85.132. Demonstration Projects in Nursing Facilities

(a) The Texas Department of Human Services shall establish one or more demonstration projects in nursing facilities to:

(1) assist the Texas Department of Human Services in analyzing the cost of providing care for persons with AIDS or HIV infection and related conditions authorized by this subchapter;

(2) provide test sites in designated nursing facilities to study the costs and requirements of the operation of those facilities and the provision of appropriate nursing care and other related

programs and services;

(3) demonstrate the extent of the need for facilities that can provide the long-term nursing care that is required by a person with AIDS or HIV infection and related conditions when those persons are not in need of hospitalization for an acute exacerbated condition;

(4) determine the extent of the individualized nursing care required to adequately meet the specific needs of persons with AIDS or HIV infection and related conditions without imposing the costs of providing those programs and services on all facilities that currently provide nursing care to persons whose needs are different than the needs of persons with AIDS or HIV infection and related conditions; and

(5) provide one or more teaching and demonstration models for caring for persons with AIDS or HIV infection and related conditions.

(b) Participants in the demonstration project are entitled to reimbursement at a special rate that covers all the cost of the care provided.

#### SUBCHAPTER G. POLICIES OF CORRECTIONAL AND LAW ENFORCEMENT AGENCIES, FIRE DEPARTMENTS, AND EMERGENCY MEDICAL SERVICES PROVIDERS

##### 85.141. Model Policies Concerning Persons in Custody

The department, in consultation with appropriate correctional and law enforcement agencies, fire departments, and emergency medical services providers, shall develop model policies regarding the handling, care, and treatment of persons with AIDS or HIV infection who are in the custody of the Texas Department of Criminal Justice, local law enforcement agencies, municipal and county correctional facilities, and district probation departments.

##### 85.142. Adoption of Policy

(a) Each state and local law enforcement agency, fire department, emergency medical services provider, municipal and county correctional facility, and district probation department shall adopt a policy for handling persons with AIDS or HIV infection who are in their custody or under their supervision.

(b) The policy must be substantially similar to a model policy developed by the department under Section 85.141.

(c) A policy adopted under this section applies to persons who contract or subcontract with an entity required to adopt the policy under Subsection (a).

##### 85.143. Content of Policy

A policy adopted under this subchapter must:



- (1) provide for periodic education of employees, inmates, and probationers concerning HIV;
- (2) ensure that education programs for employees include information and training relating to infection control procedures and that employees have infection control supplies and equipment readily available; and
- (3) ensure access to appropriate services and protect the confidentiality of medical records relating to HIV infection.

SUBCHAPTER II. HIV MEDICATION PROGRAM [REPEALED]  
85.161 to 85.164.

SUBCHAPTER I. PREVENTION OF TRANSMISSION OF HIV AND HEPATITIS B  
VIRUS BY INFECTED HEALTH CARE WORKERS

85.201. Legislative Findings

- (a) The legislature finds that:
  - (1) the Centers for Disease Control of the United States Public Health Service have made recommendations for preventing transmission of human immunodeficiency virus (HIV) and hepatitis B virus (HBV) to patients in the health care setting;
  - (2) the Centers for Disease Control of the United States Public Health Service have found that when health care workers adhere to recommended infection-control procedures, the risk of transmitting HBV from an infected health care worker to a patient is small, and the risk of transmitting HIV is likely to be even smaller;
  - (3) the risk of transmission of HIV and HBV in health care settings will be minimized if health care workers adhere to the Centers for Disease Control of the United States Public Health Service recommendations; and
  - (4) health care workers who perform exposure-prone procedures should know their HIV antibody status; health care workers who perform exposure-prone procedures and who do not have serologic evidence of immunity to HBV from vaccination or from previous infection should know their HBsAg status and, if that is positive, should also know their HBeAg status.
- (b) Any testing for HIV antibody status shall comply with Subchapters C, D, and F, Chapter 81.'

85.202. Definitions

In this subchapter:

- (1) "Exposure-prone procedure" means a specific invasive procedure that poses a direct and significant risk of transmission of HIV or hepatitis B virus, as designated by a health professional association or health facility, as provided by Section 85.204(b)(4).
- (2) "Health care worker" means a person who furnishes health

care services in direct patient care situations under a license, certificate, or registration issued by this state or a person providing direct patient care in the course of a training or educational program.

(3) "Invasive procedure" means:

(A) a surgical entry into tissues, cavities, or organs; or

(B) repair of major traumatic injuries associated with any of the following:

(i) an operating or delivery room, emergency department, or outpatient setting, including a physician's or dentist's office;

(ii) cardiac catheterization or angiographic procedures;

(iii) a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or

(iv) the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

(4) "Universal precautions" means procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control of the United States Public Health Service.

#### 85.203. Infection Control Standards

(a) All health care workers shall adhere to universal precautions as defined by this subchapter.

(b) Health care workers with exudative lesions or weeping dermatitis shall refrain from all direct patient care and from handling patient care equipment and devices used in performing invasive procedures until the condition resolves.

(c) All institutions of higher education and professional and vocational schools training health care workers shall provide instruction on universal precautions.

(d) Health care institutions shall establish procedures for monitoring compliance with universal precautions.

#### 85.204. Modification of Practice

(a) Except as provided by Subsections (b) and (c), a health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may not perform an exposure-prone procedure.

(b)(1) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may perform an exposure-prone procedure only if the health care worker has sought counsel from an expert review panel and been advised under what circumstances, if any, the health care worker may continue

to perform the exposure-prone procedure.

(2) An expert review panel should include the health care worker's personal physician and experts with knowledge of infectious diseases, infection control, the epidemiology of HIV and hepatitis B virus, and procedures performed by the health care worker.

(3) All proceedings and communications of the expert review panel are confidential and release of information relating to a health care worker's HIV status shall comply with Chapter 81.

(4) Health professional associations and health facilities should develop guidelines for expert review panels and identify exposure-prone procedures, as defined by this subchapter.

(c) A health care worker who performs an exposure-prone procedure as provided under Subsection (b) shall notify a prospective patient of the health care worker's seropositive status and obtain the patient's consent before the patient undergoes an exposure-prone procedure, unless the patient is unable to consent.

(d) To promote the continued use of the talents, knowledge, and skills of a health care worker whose practice is modified because of the worker's HIV or hepatitis B virus infection status, the worker should:

(1) be provided opportunities to continue patient care activities, if practicable; and

(2) receive career counseling and job retraining.

(e) A health care worker whose practice is modified because of hepatitis B virus infection may request periodic redeterminations by the expert review panel under Subsection (b) of any change in the worker's HBeAg status due to resolution of infection or as a result of treatment.

(f) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive who performs invasive procedures not identified as exposure-prone should not have his or her practice restricted, provided the infected health care worker adheres to the standards for infection control provided in Section 85.203.

#### 85.205. Disciplinary Procedures

A health care worker who fails to comply with this subchapter is subject to disciplinary procedures by the appropriate licensing entity.

#### 85.206. Retention of License; Permitted Acts

This subchapter does not:

(1) require the revocation of the license, registration, or certification of a health care worker who is infected with HIV or hepatitis B virus;

(2) prohibit a health care worker who is infected with HIV or hepatitis B virus and who adheres to universal precautions, as defined by this subchapter, from:

(A) performing procedures not identified as exposure-prone; or  
(B) providing health care services in emergency situations;

(3) prohibit a health care worker who is infected with HIV and who adheres to universal precautions from providing health care services, including exposure-prone procedures, to persons who are infected with HIV; or

(4) require the testing of health care workers.

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115.8 Home Health Care Agencies

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(k) An agency shall adopt, implement, and enforce a written policy to ensure compliance of the agency and its employees and contractors with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of human immunodeficiency virus and hepatitis B virus.

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87.111. Acquired Immune Deficiency Syndrome

(a) Policy. The Texas Youth Commission (TYC) attempts to provide a safe and healthful environment for youth in its facilities. Every individual is treated equally and every individual's right to privacy is respected. Routine screening or testing for the human immunodeficiency virus (HIV) antibody is prohibited by law. Strict confidentiality shall be upheld regarding any HIV/AIDS testing or test results. TYC provides ongoing training regarding acquired immune deficiency syndrome (AIDS) to youth. Policy and procedure have been developed within the state law currently in effect. Youth should be aware that violation of the law in regard to testing or confidentiality is a Class A misdemeanor punishable by a fine and/or imprisonment and civil liability.

(b) Rules.

(1) Testing.

(A) Routine screening HIV/AIDS testing shall not be performed unless as a blind study for statistical purposes initiated by the medical director or health services administrator and with the approval of the executive director. There shall be no form of identifying information in the study.

(B) HIV/AIDS testing shall not be performed routinely as a result of an assault by a youth.

(C) HIV/AIDS testing may be done on youth under the following circumstances only:

(i) a youth signs a written consent form indicating his/her

willingness to be tested voluntarily, Consent Form, HLS-755; or (ii) a youth who is a resident of a TYC facility and the test result would change the medical or social management of the youth tested or others associated with the youth. That test must be done in accordance with the procedures in subparagraphs (D)-(H) of this paragraph.

(D) Blood may be collected for HIV testing by nurses/physicians at the statewide reception center, Evins Regional Juvenile Center, and TYC institutions. Testing of youth at other locations, including halfway houses, is done by referral of the youth to the Texas Department of Health (TDH) or its local designee for testing.

(E) Pre-test counseling regarding HIV/AIDS shall be provided to the youth by the physician or director of nurses at an institution, statewide reception center, or Evins Regional Juvenile Center prior to youth giving consent. Post-test counseling is provided regarding the result. Counseling will follow model protocols developed by the TDH, including HIV modes of transmission prevention, confidentiality, and testing issued. Pre- and post-test counseling is documented using the HLS-750 Form, Pre- and Post-test Counseling Guide for HIV Testing. Youth at locations other than institutions, statewide reception center, or Evins Regional Juvenile Center shall receive the required counseling at the approved counseling and testing site.

(F) Institution, statewide reception center, or Evins Regional Juvenile Center facility physicians or nurses shall arrange with the laboratory utilized to have HIV/AIDS test results delivered specifically to them in envelopes marked "Confidential."

(G) All documentation of pre- and post-test counseling, physician's orders for the test, consent form, test results, and other test related materials are mailed in an envelope marked confidential to the central office health services administrator. The health services administrator maintains a secure and confidential file of the material.

(H) None of these materials, copies of them, or references to them shall be a part of the medical subfile or any other file. These records shall not be forwarded to other facilities or agencies but to the health services administrator in central office in a sealed envelope marked "Confidential."

(2) Confidentiality.

(A) All medical information, including information about HIV/AIDS infection, counseling, testing or test results in confidential and may not be released or disclosed except to facility physicians and nurses, the agency's medical director, and health services administrator.

(B) HIV/AIDS status shall not be released to nonmedical personnel unless written consent, specifying certain individuals

or certain classes of persons, is obtained from the youth or a person legally authorized to consent on behalf of the youth.

(C) Employees or youth receiving documentation or viewing information about a person's HIV/AIDS infection, testing, or testing results shall keep this information confidential and not release it to others. Any documentation should be forwarded to the health services administrator in central office in an envelope marked "Confidential."

(D) If a youth requests information regarding HIV/AIDS testing or test results from a nonmedical staff member, that staff should advise the youth to speak only with the physician or the director of nurses at an institution, or the health services administrator in central office if at a non-institutional placement. Further disclosure by staff is a breach of the confidentiality laws of the state.

(E) A youth may voluntarily choose to discuss his AIDS/HIV status with staff; however, staff should ensure that the youth then receives accurate advice and counseling. This may be accomplished by referring the youth to the facility physician/head nurse or the health services administrator in central office. Further disclosure by staff is a breach of confidentiality.

(F) Documentation should be made that all persons have been informed that breaching confidentiality may result in both civil and criminal liabilities.

(3) Reporting. As required by state law, TYC reports any AIDS cases or HIV positivity of a youth, diagnosed by a physician in accordance with the Center for Disease Control (CDC) Standards, to the appropriate Texas Department of Health authority through the facility or contract physician.

(4) Housing.

(A) HIV positive youth will not be segregated from the general population based solely on positive HIV status. Assumed or perceived conditions are not valid reasons for segregation or isolation.

(B) Special housing or placement will be considered on an individual basis based on behaviors or medical conditions which pose an imminent risk to the HIV positive youth or others. Evaluation of segregation of HIV infected youth must also be determined by the availability of space and the possibility of unreasonable or unsafe crowding conditions.

(C) The decision for special housing or placement will be made by the executive director upon advice from the facility administrator, medical director, health services administrator, chief legal counsel, and other appropriate professional staff.

(D) Claims of contamination of environmental surfaces (i.e., walls, floors, furniture, eating utensils) should not be

determinative of isolation since proper infection control disinfection techniques eliminate HIV and other pathogens.

(5) Treatment. HIV positive youth will be referred immediately to appropriate health care facilities or specialists for further evaluation, treatment, and counseling. Facilities of the University of Texas Health Science System are a primary resource; however, referrals are not limited to these centers. Treatment provided will be in accordance with the recommendations established by the CDC in Atlanta and the Texas Department of Health. Referrals for appropriate care must be arranged prior to a transfer from one location to another and prior to discharge. The health services office will pursue funding for treatment and medication through the Texas Department of Health and other sources.

(6) Access to services. Youth in TYC facilities shall not be denied equal access to appropriate medical services because of their AIDS/HIV status.

(7) Education. Periodic HIV/AIDS education to youth is based on current, accurate scientific information provided by officially recognized authorities on public health. Information is imparted in a manner that youth comprehend and is based on cultural and other differences, including risk. Periodic education must be documented for youth.

(A) All youth participate in a training session upon admission to the statewide reception center. Training is documented in each youth's medical subfile.

(B) Education continues as a routine segment of the academic program in TYC operated schools.

(C) Education of youth includes basic information about:

- (i) the disease and disease process;
- (ii) symptoms;
- (iii) modes of HIV transmission;
- (iv) methods of prevention of HIV transmission;
- (v) behaviors that are a potential high risk for HIV infection;
- (vi) potential HIV transmission behavior that are in violation of Texas criminal laws;
- (vii) infection control procedures;
- (viii) appropriate services available;
- (ix) confidentiality of medical information and the civil and criminal penalties for failing to adhere;
- (x) occupational precautions;
- (xi) issues that deal with HIV/AIDS during confinement and/or after release; and
- (xii) risk reduction behaviors.

The AIDS policy (board letter 88-1, May 1988) is adopted by reference. Copies are filed with the Secretary of State's Office, Texas Register Division. Copies can be obtained from the office of the Texas Board of Pardons and Paroles, 8610 Shoal Creek Boulevard, P.O. Box 13401, Austin, Texas 78711.

#### Ch. 271 CLASSIFICATION AND SEPARATION OF INMATES

##### 271.2. Classification Plan.

Each sheriff shall develop and implement a written classification plan, approved by the Commission, which shall contain provisions for the following.

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(8) The separation of inmates with communicable or contagious diseases from all other inmates.

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##### 271.3. Cell Assignment.

The number and capacity of cells or rooms in a facility shall be designed and constructed so that the mandatory separation provisions of Texas Civil Statutes article 5115, and the facility's inmate classification plan can be complied with.

##### 271.4. Responsibility, Records.

The sheriff or his designee should be responsible for the cell assignment of inmates following classification and all information concerning classification and cell assignment shall be kept in the inmates' records.

#### PILOT PROJECT FOR PERSONS WITH AIDS

##### 48.2301. Client Eligibility Criteria

To be determined eligible by the Texas Department of Human Services (DHS) for the Pilot Project for Persons with AIDS, an applicant must Satisfy the following requirements:

(1) meet financial eligibility requirements. An eligible client must be either:

(A) categorically eligible for supplemental security income (SSI) benefits in the community, as determined by the Social Security Administration, and thus eligible for Medicaid benefits;  
or

(B) optionally eligible as determined by DHS to meet institutional income and resource requirements;

(2) be diagnosed as having acquired immune deficiency syndrome (AIDS) and meet SSI disability criteria;

(3) meet the level of care criteria as determined at least annually by TDH according to 41.801 and 41.802 of this title (relating to Level-of-Care Criteria), nursing facility administration, and as verified on the level of care assessment



form;

(4) have a DHS-approved individual plan of care for services:

(A) the plan of care must be developed by an enrolled case management provider, and services must be authorized by a licensed physician as appropriate to meet the client's needs and medically necessary to prevent institutionalization;

(B) the estimated annual cost of the applicant's individual plan of care for pilot services is an average determined by DHS, and it must reasonably be expected to be equivalent to or less than the costs of institutional care;

(5) reside in one of the following counties: Bexar, Dallas, El Paso, Harris, Tarrant, or Travis;

(6) not be an inpatient or resident in a hospital, nursing, or other institutional facility.

#### 48.2302. Availability of Project Slots

Based on available funding, the department establishes a specific number of pilot program slots. When the slots are filled, a waiting list of individuals determined to be eligible for pilot services is established. As program slots become available, the case manager must determine who is to fill the vacancy, based on criteria developed by the department.

#### 48.2303. Right To Appeal

Any applicant or client who is denied services through the AIDS pilot project is entitled to a fair hearing conducted by the Texas Department of Human Services according to Chapter 79 of this title (relating to Legal Services).

#### 48.2304. Case Management Provider Standards for Participation

(a) Case management providers are required to:

(1) assess and periodically reassess the client's need for services;

(2) develop and implement a plan of care that includes pilot services, Medicaid services, and voluntary services;

(3) secure and submit all requested documentation to DHS for eligibility determination of applicant and approval of the plan of care before implementing the plan of care services;

(4) provide or subcontract for all services available under the project;

(5) monitor service delivery and evaluate service effectiveness; and

(6) manage for cost effectiveness.

(b) To contract with DHS to provide services under the Pilot Project for Persons with AIDS, a case management provider must:

(1) meet the application requirements to be a case management provider, as prescribed by DHS;

- (2) agree to provide or subcontract with other licensed providers to provide all services available through this pilot;
- (3) have a minimum of two years experience in providing case management activities and coordinating services for the AIDS population in the residing county;
- (4) meet the legal and/or licensure requirements to provide pilot services and/or ensure that subcontractors meet the legal requirements to provide pilot services;
- (5) be authorized to do business in the State of Texas by the secretary of state if the entity is organized as a corporation or have nonprofit status;
- (6) agree to comply with all the provisions of the contract; the Pilot Project for Persons with AIDS Operations Plan and revisions; policy clarifications and information letters, federal laws and regulations; and all applicable DHS rules in the Texas Administrative Code;
- (7) have sufficient operating funds, or have written agreements with service providers, to allow delivery of services under the terms of its contract while awaiting reimbursement from the department;
- (8) enroll during a time period specified by DHS.

#### 48.2305. ReImbursement

- (a) The Texas Department of Human Services (DHS) reimburses enrolled providers for services provided to clients based on a DHS-approved plan of care. The provider agency must accept the department's payment as payment in full.
- (b) The department determines a unit rate reimbursement for each of the following pilot services: case management, homemaker, skilled nursing, outpatient drug treatment services, and group insurance premiums.
- (c) The provider agency must neither charge or take other recourse against Medicaid clients, their family members, or their representatives for any claim denied or reduced by the department because of the provider agency's failure to comply with any department rule, regulation, or procedure.
- (d) Provider agencies are not entitled to payment for services if:
  - (1) the client is not an eligible participant as determined by DHS;
  - (2) the client is an inpatient of a hospital, ICF, SNF, or ICF-MR facility;
  - (3) services are not approved in advance by DHS on the individual plan of care form;
  - (4) the number of units of service delivered and billed exceeds the number of units authorized on the individual plan of care form;

- (5) the claim exceeds the actual number of units delivered;
- (6) services are ordered by a physician who has been excluded from the Medicare and/or Medicaid programs.
- (e) The provider agency is responsible for the accuracy of the claim submitted for payment. If the department rejects a claim because of errors, the provider agency must research the errors, initiate appropriate corrective action, and resubmit a corrected claim to the department with supporting documentation.
- (f) The department establishes reimbursement rates based on acceptable and reasonable rate methodology practices. The determination of appropriate rates for pilot services is a function of the pilot. Therefore, reimbursement rates are determined in two phases.
  - (1) Initial reimbursement rates are based upon the best available cost data from currently existing programs or from charges existing in the market-place for similar services.
  - (2) Subsequent rates are established based on historical costs of providing the services under the pilot. Financial and statistical information is collected from each provider through cost report -forms.
- (g) Provider agencies must submit financial and statistical information at least annually on reporting forms provided by DHS or on facsimiles which are formatted according to DHS specifications and are preapproved by DHS staff.
- (h) If a provider agency fails to file a report according to all applicable rules and instructions, the department may withhold all provider payments until the provider agency submits an acceptable report.
- (i) Provider agencies must prepare the cost report to reflect the activities of the provider agency during its previous fiscal year. The cost report is due to DHS no later than 90 days following the end of the provider's fiscal year. Cost reports may be required for other periods at the discretion of the department.
- (j) The department may perform on-site audits of all provider agencies that participate in the pro-gram.
- (k) Each provider agency or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider agency. If a provider agency does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold is placed on vendor payments until access to the records is allowed. If the provider agency continues to deny access to records, the department may cancel the provider agency's contract.

## SUBCHAPTER I. JOINT TDH/DHS HIV PREVENTION

### 56.901. Patient Education

Family planning providers must give all patients basic information about HIV infection, safer sexual behaviors, and the benefits of correct condom use. Pamphlets, fact sheets, or other written materials dealing with these topics must be available in the waiting room. At the appropriate educational level these subjects must also be covered in community education sessions.

### 56.902. Basic HIV Risk Assessment

(a) Family planning providers must include a thorough sexual history and a risk assessment for HIV infection as a part of all initial visits.

(b) Providers must update the sexual history and risk assessment information as medically indicated and at a minimum on an annual basis.

(c) If indicated by the risk assessment, HIV pretest counseling and testing must be offered on site or by referral.

(d) If patients request information about testing, providers must provide appropriate information and offer testing or a referral for testing.

### 56.903. Human Immunodeficiency Virus (HIV) Testing and Counseling

(a) To any patient requesting an HIV test, providers must offer the service on site or by referral.

(b) If the HIV test is offered on site, the provider must offer confidential pre-test and post-test counseling, performed by persons with appropriate training.

### 56.904. Protection of Confidentiality

In performing risk assessment, referral, and testing, providers must protect the confidentiality of the patient.

### 117.1. HIV/AIDS Workplace Guidelines

(a) The commission proposes for adoption by reference the commission policy entitled "HIV/ AIDS Workplace Guidelines." The guidelines consist of two parts, as follows.

(1) The first part consists of general, workplace guidelines concerning HIV-related policies, procedures, and education programs in the workplace. The commission proposes for adoption and all private employers are encouraged to adopt HIV-related workplace guidelines that incorporate at a minimum the general workplace guidelines of the Department of Health which that department adopted by reference in the December 15, 1989, issue of the Texas Register (14 TexReg 6515).

(2) The second part consists of more specific workplace

guidelines which are to address direct care providers. The commission proposes for adoption and implementation workplace guidelines similar to specific workplace guidelines of the Department of Health which that department adopted by reference in the December 15, 1989, issue of the Texas Register (14 TexReg 6515) which include contractors providing direct client services and programs.

(b) Copies of the guidelines are available for review in the offices of Human Resource Management and Programs, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751. Copies are available on request.

#### SUBCHAPTER N. AIDS POLICIES FOR CHILDREN IN PRS CONSERVATORSHIP 700.1401. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Acquired immune deficiency syndrome (AIDS)--A severe form of illness caused by human immunodeficiency virus (HIV).

HIV transmission-Infection with HIV, which occurs through an exchange of blood, semen, or vaginal secretions, according to the Center for Disease Control in Atlanta, in "Morbidity and Mortality Weekly Report," June 24, 1988, pages 377-382 and 387-388.

Testing for HIV antibodies-Blood tests performed to determine the presence of HIV by detecting antibodies formed to defend against it.

#### 700.1402. Identification of Children To Be Tested

(a) The Texas Department of Protective and Regulatory Services (PRS) considers that children are at high risk of HIV infection and AIDS only if their histories include one or more of the following circumstances:

- (1) the child is less than three years old, and his mother:
  - (A) has AIDS or has tested HIV positive;
  - (B) has engaged in vaginal or anal intercourse with someone who has AIDS or has tested HIV positive;
  - (C) has engaged in vaginal or anal intercourse with a male who has engaged in same-sex anal intercourse;
  - (D) has a history of intravenous drug use;
  - (E) has engaged in vaginal or anal intercourse with someone who has a history of intravenous drug use;
  - (F) received blood or blood products between January 1978 and May 1985; or
  - (G) has engaged in vaginal or anal inter-course with someone who received blood or blood products between January 1978 and May 1985; or

(2) regardless of his age, the child:

(A) has been involved in vaginal or anal intercourse with someone who has AIDS or has tested HIV positive;

(B) has been involved in vaginal or anal intercourse with a male who has engaged in same-sex anal intercourse;

(C) is a male and has been involved in same-sex anal intercourse;

(D) is an intravenous drug user;

(E) has been involved in vaginal or anal intercourse with an intravenous drug user;

(F) received blood or blood products between January 1978 and May 1985; or

(G) has been involved in vaginal or anal intercourse with someone who received blood or blood products between January 1978 and May 1985.

(b) PRS must ensure that each child under one year of age in the department's conservatorship is tested for HIV antibodies if the child faces a high risk of HIV infection as a result of his mother's behavior or circumstances, as specified in subsection (a)(1) of this section. These children are tested because they are susceptible to an array of diseases and should receive live virus inoculations only with medical consultation. The results of HIV antibody tests for infants under 15 months of age are considered inconclusive as a result of the infants having received their mother's antibodies in utero. PRS, therefore, must ensure that each child testing positive for HIV antibodies is retested after the child is 15 months old.

(c) PRS must ensure that each sexually abused child from zero through six years of age in the department's conservatorship is tested for HIV antibodies twice, with a 12-week interval between the two tests, if the child's abuse included vaginal or anal penetration by a male whose behavior or circumstances indicate a high risk of HIV infection, as specified in subsection (a)(2) of this section. These children are tested because children infected by HIV should receive live virus inoculations only with medical consultation.

(d) PRS must ensure that each child over one year of age in the department's conservatorship is tested for HIV antibodies if all of the following conditions are met:

(1) the child faces a high risk of HIV infection, as specified in subsection (a) of this section;

(2) the child exhibits symptoms of AIDS; and

(3) a physician recommends testing in writing. PRS must place the physician's written recommendation in the child's case file.

(e) PRS may waive the policies specified in subsections (a)-(d) of this section if circumstances warrant doing so. The department's assistant commissioner for protective services for families and children must authorize such waivers in advance and

in writing.

#### 700.1403. Testing and Counseling

The Texas Department of Protective and Regulatory Services (PRS) secures HIV antibody testing through local health departments, private physicians and clinics, and contracted family planning agencies. If initial tests are reactive, the department must ensure that confirming tests are performed before the results are considered positive and before post-test counseling is done.

(b) PRS must ensure that:

(1) every child who is tested for HIV antibodies receives pre and post-test counseling and information appropriate to his age and emotional development; and

(2) every child whose testing results are positive, as described in subsection (a) of this section, receives ongoing post-test counseling and information appropriate to his age and emotional development.

(c) PRS secures the counseling services required in subsection (b) of this section through health departments, private physicians, contracted family planning agencies, and counseling centers with staff who specialize in counseling people with AIDS and people being tested for HIV antibodies.

#### 700.1404. Notification

If a child in the Texas Department of Protective and Regulatory Services' conservatorship has AIDS or if the results of his HIV antibody testing are positive as specified in §700.1403(a) of this title (relating to Testing and Counseling), PRS must inform:

(1) the child's legal parents if their whereabouts are known; and

(2) the foster parents, 24-hour child care providers, or relatives with whom the child is in placement or is proposed for placement.

#### 700.1405. Caregiver Training

(a) The Texas Department of Protective and Regulatory Services (PRS) must ensure that all foster parents and 24-hour child care providers who care for children in the department's conservatorship receive training and informational materials about HIV, AIDS, and universal precautions to prevent HIV transmission.

(b) When a child in PRS's conservatorship has AIDS or when the results of his HIV antibody testing are positive as specified in §700.1403(a) of this title (relating to Testing and Counseling), the foster parents, 24-hour child care providers, or relatives with whom the child is in placement, or with whom the child is proposed for placement, must participate in specialized training

arranged for or provided by PRS. No child in PRS's conservatorship who is known to have AIDS or to have tested positive for HIV antibodies may be placed with a nonparental caregiver who has not received the specialized training required in this subsection.

(c) PRS may either directly provide the types of training and information required in subsections (a) and (b) of this section or secure the required training and information from local health departments, contracted family planning agencies, or local programs that serve people with AIDS.

#### 700.1406. Confidentiality

(a) Foster parents and 24-hour child care providers who care for children in the Texas Department of Protective and Regulatory Services' conservatorship who have AIDS, or who have tested positive for HIV antibodies, must keep the children's HIV status confidential. Caretakers are permitted to release information regarding the child's HIV status only to medical personnel or to persons listed on the department's form entitled "Authorization to Release Confidential Information Regarding HIV Status." Caretakers may release information regarding the child's HIV status to other entities, such as schools and day care centers, or to other individuals only if both of the following conditions are met:

(1) the release is necessary to ensure appropriate care and protection of the child and protection of others in the child's environment; and

(2) the program director of the child's PRS conservatorship unit has authorized the release in writing.

(b) Foster parents or 24-hour child care providers who care for a child in PRS conservatorship must sign PRS's form entitled "Authorization to Release Confidential Information Regarding HIV Status" in order to document that they have been informed that the child has AIDS or has tested positive for HIV antibodies, and that they are aware of the penalties for unauthorized release of information regarding the child's medical condition.