

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 9, 2010**

Agenda Item Title: Repeal of rules concerning Human Immunodeficiency Virus (HIV) prevention, testing, and treatment (in state hospitals)

Agenda Number: 4.a.

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

DSHS HIV/STD Program within the Prevention and Preparedness Division and the State Hospital Section within the Mental Health and Substance Abuse Division oversee various portions of the HIV prevention, testing, and treatment rules.

The HIV/STD Program provides educational services through state employees who conduct training programs and provide surveillance in state hospitals. The State Hospital Section is composed of 13 state hospitals that primarily treat mental health; however, they also see to the physical health care needs of the patients. It is in this context that state hospitals would test and treat patients and employees who have or are exposed to HIV.

Both the HIV/STD Program and the State Hospital Section are funded with general revenue.

Key Health Measures:

Repeal of the rules will not change current practices for HIV prevention, testing, or treatment in state hospitals. In the absence of rules, the State Hospital Section will continue to adhere to the medical best practices stipulated in Centers for Disease Control and Prevention (CDC) guidelines and the requirements of state law. The HIV/STD program will continue to adhere to the other applicable requirements in state and federal law.

The expected outcome of repealing these rules is eliminating duplication and conflict with CDC guidelines and other applicable state and federal laws. CDC revises guidelines frequently and develops them from substantial best practices research. The guidelines represent a clear national standard. Additionally, The Joint Commission advises all accredited hospitals to adhere to the CDC guidelines.

During the 2010 calendar year, the state hospitals tested 6645 people for HIV. 141 people have tested positive for HIV or AIDS. Direct contact state hospital employees also must complete Infection Control Training before beginning employment and complete a required refresher training every 12 months in compliance with state law.

Summary:

In January 2010, the State Hospital Section issued a policy stipulating that the state hospitals would follow the CDC *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care-Settings* last revised in 2006.

TITLE 25. HEALTH SERVICES

Part 1. Department Of State Health Services

Chapter 405. Patient Care - Mental Health Services

Subchapter L. Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment

Repeals §§405.281 - 405.297

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§405.281- 405.297 concerning Human Immunodeficiency Virus (HIV) Prevention, Testing, and Treatment.

BACKGROUND AND PURPOSE

The repeal is necessary to better conform HIV prevention, testing, and treatment in state hospitals (Austin State Hospital, Big Spring State Hospital, El Paso Psychiatric Center, Kerrville State Hospital, North Texas State Hospital, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, Rio Grande State Center, and Waco Center for Youth) to state law and the Centers for Disease Control and Prevention (CDC) guidelines regarding prevention, counseling, testing, and treatment.

The rules are no longer necessary because the requirements are covered sufficiently in other statutes, other rules, federal law, and departmental policy. The requirements for the rules are covered sufficiently in Health and Safety Code, Chapters 81, 85, 181, and 611; Civil Practice and Remedies Code, §74.104; the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information, 45 Code of Federal Regulations Parts 160 and 164; the Americans with Disabilities Act, 42 United States Code §12101 *et seq.*; CDC *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care Settings*; 25 TAC §§97.131 - 97.146 and §§414.1 - 414.8; and the department's guidelines for HIV Testing in State Hospitals, Revised January 22, 2010.

In January 2010, the State Hospital Section issued a policy stipulating that the state hospitals would follow the CDC *Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health Care-Settings* last revised in 2006. That policy is located at http://online.dshs.state.tx.us/statehospitalguidelines/3_8.pdf. The benefits of following the CDC guidelines are that the CDC revises the guidelines frequently, the CDC develops the guidelines from substantial best practices research, and the guidelines represent a clear national standard. Additionally, The Joint Commission advises all accredited hospitals to adhere to the CDC guidelines (Sentinel Events Issue 28).

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 405.281 - 405.297 have been reviewed and the department has determined that reasons for adopting the sections no longer exist because rules are no longer needed.

SECTION-BY-SECTION SUMMARY

The repeal of §§405.281 - 405.297 will eliminate unnecessary rules and bring the department into compliance with state and federal law and CDC guidelines.

FISCAL NOTE

Michael Maples, Assistant Commissioner, Mental Health and Substance Abuse Division, has determined that for each year of the first five-year period that the repeals are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed for repeal.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed for repeal. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the repealed sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed for repeal. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Maples has determined that for each year of the first five years the sections are in effect the public will benefit as a result of the repeal of these rules because unnecessary rules will be eliminated while maintaining continued protection of the public health, welfare, and safety in keeping with currently accepted medical practices.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Nnenna Ezekoye, Mental Health and Substance Abuse Division, Department of State Health Services, Mail Code, 2053, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5268, or by email to Nnenna.Ezekoye@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register*. The meeting date and location will be posted on the Behavioral Health Medical Director website (<http://www.dshs.state.tx.us/mhsa/medicaldirector/>) and the Mental Health and Substance Abuse Division Website (<http://www.dshs.state.tx.us/mentalhealth.shtm>). Please contact Nnenna Ezekoye at (512) 206-5268 or Nnenna.Ezekoye@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §81.004, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to communicable diseases and Health and Safety Code; §85.003, which authorizes the department to adopt policies and guidelines for HIV education, prevention, risk reduction materials, policies, and information in this state; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The repeals affect the Health and Safety Code, Chapters 81, 85, and 1001; and Government Code, Chapter 531.

Sections for repeal.

§405.281. Purpose.

§405.282. Application.

§405.283. Definitions.

§405.284. Policy Overview.

§405.285. Education.

- §405.286. Screening for HIV Antibody.
- §405.287. Counseling.
- §405.288. Confidentiality of Test Results.
- §405.289. Documentation of Test Results.
- §405.290. Required Reporting of Test Results.
- §405.291. Management of Exposure to Blood/Body Substances.
- §405.292. Limitation of Client Activity.
- §405.293. Personnel Issues.
- §405.294. Responsibility and Resources.
- §405.295. Exhibits.
- §405.296. References.
- §405.297. Distribution.

Proposed Repealed Language
~~Strikethrough= repealed text~~

~~§405.281. Purpose.~~

~~The purpose of this subchapter is to:~~

- ~~–(1) describe the policies and procedures of the Texas Department of Mental Health and Mental Retardation (TDMHMR) concerning testing for and treatment of the human immunodeficiency virus (HIV) for people receiving residential services from department facilities and for employees;~~
- ~~–(2) require strict compliance with federal and state laws governing confidentiality and protection from discrimination; and~~
- ~~–(3) promote prevention and require education of clients and employees concerning HIV.~~

~~§405.282. Application.~~

~~This subchapter applies to all TDMHMR facilities.~~

~~§405.283. Definitions.~~

~~The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~–(1) AIDS—Acquired immune deficiency syndrome as defined by the National Centers for Disease Control and Prevention of the U.S. Public Health Service.~~
- ~~–(2) Facility—The campus and community-based residential programs of a state hospital, state school, or state center of the Texas Department of Mental Health and Mental Retardation.~~
- ~~–(3) High risk behaviors—As defined by the National Centers for Disease Control and Prevention (CDC), behaviors involving:
 - ~~—(A) unprotected vaginal, anal, or oral intercourse (sex); or~~
 - ~~—(B) sharing of needles ("works") for injecting drug use.~~~~
- ~~–(4) HIV—Human immunodeficiency virus.~~
- ~~–(5) Sexual contact—Vaginal, oral, or anal sexual intercourse.~~
- ~~–(6) Test results—Any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.~~
- ~~–(7) Universal precautions—An approach to infection control in which all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.~~

~~§405.284. Policy Overview.~~

~~(a) Background. The presence of demonstrated antibody to the human immunodeficiency virus (HIV) is considered an indication that HIV infection is present and that there is potential for transmission of the virus. Acquired immunodeficiency syndrome (AIDS) is the last stage of infection with the human immunodeficiency virus. This virus infects the white blood cell~~

lymphocytes and other specific cells in blood and organ tissue, reducing the body's ability to ward off disease. The body substances containing the greatest amount of the virus are blood, semen, and vaginal secretions. All medical evidence indicates that HIV is transmitted through sexual contact (vaginal, anal, or oral) with a person who is already infected with HIV; through the exchange of infected blood such as through sharing of needles or syringes during injected drug use, and/or from transfusion or infusion of infected blood or blood products; and/or from mother to baby during pregnancy, birth (delivery), or through breast milk/breastfeeding. HIV infection is not transmitted through ordinary social, occupational, or household contacts of a non-sexual nature. The exercise of universal precautions and other infection control standards as mandated by the department and by the Texas Health and Safety Code serves to reduce the risk of transmission of HIV infection as well as other communicable diseases.

(b) Admission of persons known to be HIV infected. Persons with mental illness or mental retardation who have HIV infection will be admitted to TDMHMR facilities in accordance with established departmental admission criteria. On admission of a person with a confirmed diagnosis of HIV infection or acquired immunodeficiency syndrome, it is the responsibility of the department to provide appropriate medical assessment and treatment, including treatment regimens acknowledged to prevent opportunistic infections as described in Exhibit A of §405.295 of this title (relating to Exhibits).

(c) Confidentiality. All TDMHMR clients are entitled to privacy and preservation of their personal dignity. It is the responsibility of the department to promote confidentiality for the HIV-infected client without compromising the safety of others by ensuring that proper precautions are clearly understood without discriminatory labeling.

—(1) Because of gaps in public education and consequently, misguided attempts to protect the public which arise from fear of the unknown, it is of special importance that information regarding testing for HIV antibodies and the results of such testing remain confidential within the narrow limits defined by the Texas Communicable Disease Prevention and Control Act. Written reference to the client's medical diagnosis belongs only in the client's medical records.

—(2) Appropriate treatment of individuals with reactive HIV serostatus can only be guaranteed when that status is not in itself an issue for the treatment staff. The penalties for unauthorized disclosure of confidential information provided in the Texas Health and Safety Code, §81.103, attest to the seriousness with which the issue of confidentiality must be approached. In addition, federal civil rights laws, including the Rehabilitation Act of 1973, §504, and the Americans with Disabilities Act of 1990, protect persons with AIDS or AIDS-related conditions from discrimination by any program or activity which receives federal financial assistance.

(d) High risk behavior. Although the department is supportive of efforts to provide a normalized environment which respects the individual rights of clients—including the right to express one's sexuality—the serious consequences of behavior which could result in an increased risk of transmission of HIV infection cannot be ignored.

—(1) Specific HIV education, including risk reduction, tailored to each client's level of understanding, must be routinely made available to all clients who are capable of understanding the information. The decision that HIV education is either unnecessary or inappropriate, and the reasons for this determination, must be documented in the client's social assessment.

—(2) High risk behaviors, including sexual contact, must be curtailed while clients reside in TDMHMR facilities. Persons whose behavior is considered to place them at high risk for contracting or transmitting HIV infection and who cannot or will not change behaviors to reduce

or eliminate that risk shall have individual treatment plans developed to require close monitoring to prevent the endangerment of others.

~~§405.285. Education.~~

~~(a) Education about the transmission of HIV infection and AIDS is the primary defense available to curtail the spread of the disease and its devastating consequences. The Texas Health and Safety Code, §§85.010, 85.113, and 85.114, mandate HIV/AIDS education for employees and clients of TDMHMR and any entity that contracts with or is funded or licensed by TDMHMR. The act further requires that educational programs be tailored to the specific needs of target audiences. The TDMHMR HIV Prevention Program, through the Office of Medical Support Services, provides an array of educational programs onsite at facilities to ensure that the requirements of law are met. Program educators have been certified as HIV/AIDS instructors by the National Institute on Drug Abuse and the Texas Department of Health. A description of courses offered and target audiences is found in Exhibit B of §405.295 of this title (relating to Exhibits). All advanced courses have been approved for continuing education credit.~~

~~(b) The superintendent/director of each facility must, at a minimum, ensure that all employees receive a basic education in HIV/AIDS using a curriculum approved by the TDMHMR HIV Prevention Program director and presented by instructors trained and certified by HIV Prevention Program staff. Professional staff in numbers sufficient to meet the HIV counseling needs of individual facilities must also attend the TDMHMR four day counselor training course and be certified as HIV counselors. It is essential that programming in health, normalization, and life management skills also provides specific and accurate information appropriate to the client group; therefore specific curricula are offered to assist staff in achieving that objective.~~

~~§405.286. Screening for HIV Antibody.~~

~~(a) Laboratory services. An interagency contract has been negotiated between Central Office and the Texas Department of Health (TDH) for serologic screening and confirmatory testing. A statement of current charges for initial screening and for confirmatory testing (Western Blot test) is available from the TDMHMR Office of Medical Support Services. All testing is to be consistent with the guidelines set forth in this subchapter.~~

~~(b) Confirmatory testing. A test for HIV antibody is not reactive unless the preliminary screening test, the ELISA, is confirmed by the Western Blot test. The TDH HIV test protocol provides Western Blot testing on all specimens which are reactive by ELISA methodology.~~

~~(c) Epidemiologic evaluation. Persons with a reactive Western Blot test, even though considered to be HIV infected, must be evaluated epidemiologically to determine if they pose a significant risk for transmitting the infection.~~

~~(d) Counseling. Consistent with the requirements of the Texas Health and Safety Code, §§81.109, 85.087, and 85.116, and the philosophy of this department, appropriate pre and post-test counseling must be provided to all individuals who are to be tested for the HIV antibody. Counselors must meet the requirements in §405.287 of this title (relating to Counseling).~~

~~(e) Screening.~~

~~(1) Routine screening. Routine screening of clients, including new admissions, is not to be performed.~~

~~—(2) Voluntary screening. All persons admitted should be assessed for their risk for having become HIV infected and, as appropriate, should be encouraged to be tested for HIV antibody in order for early treatment interventions to be offered. Voluntary HIV antibody testing is to be made available to all clients upon request.~~

~~—(3) Other screening.~~

~~—(A) In cases other than voluntary screening, screening may be performed only when, in the judgment of the attending or admitting physician, the client:~~

~~—(i) clinically exhibits signs which are consistent with the Centers for Disease Control (CDC) case definition of AIDS or HIV-related illness; or~~

~~—(ii) is considered to have significant potential, because of behavioral characteristics, to transmit the infection; or~~

~~—(iii) has been potentially exposed to HIV infection; or~~

~~—(iv) has previously been diagnosed as having HIV infection, or AIDS, and confirmation is required (serologic tests have been run elsewhere); or~~

~~—(v) is documented to be the source of a significant exposure, as described in §405.291(a) of this title (relating to Management of Accidental Exposure to Blood/Body Substances), of another person, and then in accordance with established infection control protocols.~~

~~—(B) The physician requiring the screening will document the medical/behavioral necessity for the screen in the physician's order section or progress notes section of the client's medical record.~~

~~(f) Informed consent. It is strongly recommended that informed consent be obtained, if possible, individuals who are to be tested.~~

~~—(1) Pursuant to the Texas Health and Safety Code, §81.102, testing may be conducted without consent for residents and clients of TDMHMR residential facilities if:~~

~~—(A) the test result would change the medical or social management of the person tested or others who are associated with that individual; and~~

~~—(B) the test is conducted in accordance with this subchapter and any other guidelines approved by the department.~~

~~—(2) Pursuant to the Texas Health and Safety Code, §81.102 and §81.107, testing may be conducted without consent in order to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the department in Exhibit C of §405.295 of this title (relating to Exhibits).~~

~~—(3) Pursuant to the Texas Health and Safety Code, §81.106, a person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed during the time the general consent is in effect. Except as otherwise provided by the Texas Health and Safety Code, §81.106, the results of a test conducted under the authorization of the general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.~~

~~(g) Employee screening. The risk of acquiring or transmitting HIV infection is related to the degree of percutaneous contact or mucous membrane contamination with blood, semen, or vaginal secretions containing the HIV. Studies have shown that there is a very low risk of transmission and seroconversion in healthcare workers who deal with persons with HIV infection, as long as universal precautions are utilized and there is no sexual contact with the HIV infected individual. Further, studies have demonstrated that there is a low risk of~~

seroconversion for HIV among healthcare workers who sustained needlesticks with no other risk factors present.

~~–(1) Routine screening of employees or prospective employees is not to be performed.~~

~~–(2) Procedures for management of employee exposure to HIV are set out in §405.291 of this title (relating to Management of Accidental Exposure to Blood/Body Substances) and in Exhibit C of §405.295 of this title (relating to Exhibits).~~

~~§405.287. Counseling.~~

~~(a) Each individual to be screened shall receive pre and post test counseling. For individuals who are likely to be discharged from the facility prior to receipt of test results, consent should be obtained for referral to the local public health department HIV/STD division for notification and follow up if the test is reactive. Such referrals are, by law, handled by the health department in a totally confidential manner.~~

~~(b) Pursuant to the Texas Health and Safety Code, §85.087, each facility must have professional staff who have been trained in the full HIV/AIDS Prevention Training Program Curriculum for HIV Antibody Test Counselors. Lists of individuals who have successfully completed the training are submitted to the state registry as required by the Texas Health and Safety Code, §85.087, and are to be maintained by the facility infection control practitioner and staff development office. Only those individuals shall provide HIV antibody test counseling to clients or staff.~~

~~§405.288. Confidentiality of Test Results.~~

~~(a) The results of HIV tests are confidential by law. Reports, records, and information may not be released or made public except as provided by the Texas Health and Safety Code, §§81.103, 81.104, and §85.115, which sets forth strict penalties for violations. Requests from insurance companies, the Social Security Disability Determination Division of the Texas Rehabilitation Commission, or other agencies or entities must be accompanied by the appropriate signed release form authorizing the release of HIV specific information, consistent with the policies and procedures of the Association of American Medical Records Technicians.~~

~~(b) Test results will be reported by the Texas Department of Health to the Office of Medical Support Services at Central Office where they will be reviewed by the TDMHMR consultant in infectious diseases. A hard copy of the report will concurrently be mailed by the Office of Medical Support Services, in accordance with facility policy, to the chief medical technologist or facility infection control practitioner who will be responsible for notifying the physician who ordered the test. The physician shall be responsible for ensuring that post test counseling by a trained counselor is promptly provided when the client is informed of the test result in accordance with §405.287 of this title (relating to Counseling). Facilities which have no laboratories have the option of having reports mailed to the physician ordering the test or to the facility infection control practitioner.~~

~~(c) The terms "AIDS," "ARC," or "HIV" shall not be placed on the outside of any client records. Neither shall lists be maintained to identify these clients. Because all clients are to be treated with universal precautions, signs indicating blood/body fluid precautions shall not be affixed to any surface.~~

~~(d) All laboratory specimens shall be considered infectious and shall be transported in specimen transport bags, but without any labels which identify the HIV status. (No indication of HIV status is to appear on request slips or specimens.)~~

~~§405.289. Documentation of Test Results.~~

~~Results of HIV antibody tests may be placed in the client's medical record, but test results must not be accessible by computer with the exception that appropriate ICD-9 codes may become a part of the medical record portion of the computer file.~~

~~§405.290. Required Reporting of Test Results.~~

~~Human immunodeficiency virus infection that is confirmed by laboratory testing while an individual is receiving inpatient services from a TDMHMR facility is to be reported by the facility infection control practitioner to the Texas Department of Health in accordance with §§97.131-97.144 of this title (relating to Sexually Transmitted Diseases) including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV). Reporting forms and instructions for reporting can be obtained from the local, regional, or state health departments.~~

~~§405.291. Management of Exposure to Blood/Body Substances.~~

~~(a) Management of accidental exposure to blood/body substance should be consistent with the Public Health Services "Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, including Considerations Regarding Zidovudine Postexposure Use," provided in Exhibit D of §405.295 of this title (relating to Exhibits). Accidental "exposure" in the TDMHMR setting is defined as a percutaneous injury (e.g., needlestick or other penetrating puncture of the skin with a used needle or other item) or contamination of a mucous membrane (splatter/aerosols into the eyes, nose, or mouth) or significant contamination of an open wound or non-intact skin with blood, semen, vaginal secretions, or other body substances which contain visible blood.~~

~~(b) All exposures to blood and body substances which meet the criteria in subsection (a) of this section must be reported promptly (within one hour) to the client's physician or employee's supervisor and, depending on facility policy, to the employee health officer (physician or nurse) and the infection control practitioner (or designee).~~

~~(c) Under the conditions defined in subsection (a) of this section, appropriate counseling shall be given by trained HIV antibody test counselors and shall include information on the potential risk of infection and specific measure to prevent transmission. Serologic testing for HIV antibody and other bloodborne pathogens should be performed according to the protocol provided in Exhibit C of §405.295 of this title (relating to Exhibits).~~

~~(d) Although there is no firm data that it is protective, due to the low toxicity that has been found using Zidovudine (ZDV) in healthy persons and some experimental animal model experience with other retroviruses where ZDV, given before or immediately after significant exposure decreased the rates of infection or seroconversion, ZDV should be available for immediate administration (within one hour of exposure and no longer than three hours after exposure) and should be offered to persons who sustain significant accidental exposure to HIV until testing can~~

be completed. The specific protocol for offering ZDV is provided in Exhibit C of §405.295 of this title (relating to Exhibits).

~~§405.292. Limitation of Client Activity.~~

~~The behavioral and medical considerations of each client will be evaluated by the attending physician with appropriate consultation, and only those restrictions recognized to be necessary relative to containment of infection in each particular case will be imposed.~~

~~—(1) Individual cases shall be thoroughly reviewed by the physician in consultation with appropriate members of the interdisciplinary team in accordance with the Texas Health and Safety Code restrictions regarding confidentiality of the information. The reviews will be at intervals specified in the client's treatment plan or when there are significant changes in the client's behaviors which might affect the client's potential for infecting other clients or staff. If danger to self or others is established, the least restrictive intervention shall be implemented by the interdisciplinary treatment team to ensure the safety of other clients and staff. Restrictions shall be justified on the basis of the client's behavior (e.g., aggressive sexual behavior) and shall be ordered, implemented, and periodically reviewed in keeping with the following subchapters, as appropriate:~~

~~—(A) Chapter 402, Subchapter C of this title (relating to Transfer to Vernon Maximum Security Unit);~~

~~—(B) Chapter 404, Subchapter E of this title (relating to Rights of Patients Receiving Mental Health Services);~~

~~—(C) Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion in Mental Health Facilities);~~

~~—(D) Chapter 405, Subchapter G of this title (relating to Behavior Therapy Programs);~~

~~—(E) Chapter 405, Subchapter H of this title (relating to Behavior Management Facilities Serving Persons with Mental Retardation); and~~

~~—(F) Chapter 405, Subchapter Y of this title (relating to Client Rights—Mental Retardation Facilities).~~

~~—(2) Clients who are too ill medically to benefit from TDMHMR facility services shall be expeditiously referred to an appropriate medical facility.~~

~~§405.293. Personnel Issues.~~

~~(a) All employees, as indicated by their job descriptions, are expected to perform their duties, including providing care for clients with all communicable diseases, including HIV infection and AIDS.~~

~~(b) Employees who refuse to work with clients or with other employees who have HIV infection or AIDS and employees who exhibit discriminatory behavior toward these individuals may be considered insubordinate. Their actions shall be evaluated and handled in accordance with the TDMHMR Personnel Manual, §3.107 and §3.112 (Positive Performance Program and Separations, Suspensions, and Demotions).~~

~~(c) All employees, including those with HIV infection or AIDS, will be hired and/or retained in their jobs based on their ability to perform the job adequately and safely and consistent with Texas Health and Safety Code, §§85.201-85.206 and §85.012, and the Americans with~~

~~Disabilities Act. Strict confidentiality of employee medical information shall be maintained as described in Exhibit E of §405.295 of this title (relating to Exhibits).~~

~~(d) If significant exposure occurs (as defined in §405.291(a) of this title (relating to Management of Accidental Exposure to Blood/Body Substances), and it is determined by the evaluating physician that the employee is the exposure source, the employee will be required to undergo the same testing that will be required of a client who is an exposure source according to TDMHMR infection control protocol as described in Exhibit C of §405.295 of this title (relating to Exhibits). This protocol is consistent with §81.102 of the Texas Health and Safety Code. If the employee is the person exposed, follow-up will also be in accordance with the protocol described in Exhibit C which is consistent with the Texas Health and Safety Code, §81.050(j), for the purpose of qualifying for Worker's Compensation or any other similar benefits or compensations.~~

~~§405.294. Responsibility and Resources.~~

~~(a) It is the responsibility of the facility medical staff and infection control practitioner to facilitate implementation of this subchapter. The facility infection control practitioner shall be responsible for providing consultation and monitoring implementation of this subchapter.~~

~~(b) The director, HIV Prevention Program, Office of Medical Support Services, is responsible for providing requested consultation to facilities.~~

~~(c) The Office of Medical Support Services' HIV/AIDS Prevention Program staff are responsible for development and presentation of required basic and advanced training modules for clients and employees.~~

~~(d) Facility administrators are responsible for ensuring that clients and employees receive the training.~~

~~§405.295. Exhibits.~~

~~The following exhibits are referenced in this subchapter:~~

~~–(1) Exhibit A—Recommendations for Basic Evaluation of HIV-Infected Patients: CD4 Cell Counts, Use of Antivirals, and Prevention of Opportunistic Infections;~~

~~–(2) Exhibit B—HIV/AIDS Prevention Program;~~

~~–(3) Exhibit C—Management of Accidental Exposure to Blood/Body Substances—TXMHMR Protocol for Serologic Testing and Follow-up;~~

~~–(4) Exhibit D—Public Health Services Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, including Considerations Regarding Zidovudine Postexposure Use; and~~

~~–(5) Exhibit E—TDMHMR HIV/AIDS Workplace and Confidentiality Policy.~~

~~§405.296. References.~~

~~The following laws and rules are referred to in this subchapter:~~

~~–(1) Texas Communicable Disease Prevention and Control Act, Texas Health and Safety Code, Chapters 81 and 85;~~

~~–(2) Rehabilitation Act of 1973, §504;~~

~~–(3) The Americans with Disabilities Act of 1990;~~

- ~~–(4) Chapter 402, Subchapter C of this title (relating to Transfer to Vernon Maximum Security Unit);~~
- ~~–(5) Chapter 404, Subchapter E of this title (relating to Rights of Patients Receiving Mental Health Services);~~
- ~~–(6) Subchapter F of this chapter (relating to Restraint and Seclusion in Mental Health Facilities);~~
- ~~–(7) Subchapter H of this chapter (relating to Behavior Management Facilities Serving Persons with Mental Retardation); and~~
- ~~–(8) Subchapter Y of this chapter (relating to Client Rights—Mental Retardation Facilities).~~

~~§405.297. Distribution.~~

~~The provisions of this subchapter shall be distributed to the medical director and deputy commissioners, Central Office; assistant and associate deputy commissioners and directors, Central Office; superintendents/directors and medical/clinical directors of all TDMHMR facilities; advocacy organizations; all TDMHMR infection control practitioners and nursing directors; and any person requesting a copy.~~