

SYSTEM REGULATION

34.04.03 HIV/AIDS in the Workplace and Learning Environment

July 31, 1998

Supplements System Policy 34.04

1. BACKGROUND

- 1.1 The Human Immunodeficiency Virus Service Act, Chapter 85, Texas Health and Safety Code, specifies that workplace guidelines be established to ensure that the rights and privileges of individuals infected with the Human Immunodeficiency Virus (HIV) are protected.
- 1.2 To meet that requirement and acknowledge the serious nature of HIV and related health issues in the work and learning environment, the following guidelines and regulations are established for the System. This regulation is consistent with current information from public health authorities, such as the Centers for Disease Control and Prevention of the United States Public Health Service, and with state and federal laws and regulations.

2. HIV/AIDS IN THE WORK/LEARNING ENVIRONMENT

- 2.1 The System will not use a person's HIV status to make employment decisions or determine how service is delivered nor will the System deny services to HIV infected individuals, except as allowed by state or federal law. The System complies with the Americans With Disabilities Act provisions protecting all people with disabilities from discrimination in job application procedures, hiring, promotions, discharge, compensation, job training and other terms or conditions of employment. For more information on ADA protections, see System Regulation 33.02.02, Compliance with the Employment Provisions of the Americans With Disabilities Act. Employees who believe that they have been discriminated against because of HIV or AIDS should contact their human resources office to discuss the matter or file a written complaint (see System Regulation 32.01.02). Students should contact the student affairs office if they believe they have experienced discrimination due to HIV or AIDS. Other legal options may also be available.
 - 2.1.1 System components may not ask applicants or students whether they are HIV infected. If an applicant voluntarily discloses that he or she is HIV infected, this information should not be used to determine the applicant's suitability for student admission or employment unless current scientific information indicates that required activities may expose others to risk of transmission.
 - 2.1.2 A student with HIV infection should be allowed to attend classes without restrictions as long as the student is physically and mentally able to

participate and perform assigned work, and reasonably poses no health risk to others.

2.1.3 An HIV-infected employee will remain employed as long as he or she meets job performance standards and does not engage in activities on the job that current scientific information indicates may expose others to risk of transmission. This right is protected by law.

2.1.4 The employee is not obligated to provide information about his/her HIV status to the employer. If symptoms occur that interfere with an employee's performance of his or her job, the employee must provide to the employer medically verified information relating to the employee's ability to perform job duties but need not reveal the diagnosis. Procedures may be adapted to provide reasonable accommodation so a person with HIV/AIDS may remain employed and productive for as long as possible. However, all employees are expected to perform the essential functions of their jobs with or without reasonable accommodation. Likewise, all employees, including those with HIV/AIDS, have the same performance and conduct standards regarding hiring, promotion, transfer and dismissal. For more information on reasonable accommodation, see System Regulation 33.02.02, Compliance with the Employment Provisions of the Americans With Disabilities Act.

2.2 The approach and resolution of HIV/AIDS issues in the workplace will vary among System components. Careful attention should be given to:

- (1) existing leave policies for management of chronic conditions,
- (2) assessment of employee and agency needs,
- (3) current scientific information about HIV and its related conditions, and
- (4) current laws and regulations regarding HIV/AIDS. (For information on HIV testing, see Paragraph 7. For information on confidentiality, see Paragraph 8.)

3. HIV/AIDS RULES

3.1 Each System component will adopt appropriate rules, procedures, and education programs to help its employees and students better understand the medical, legal, administrative and ethical issues involved with HIV/AIDS.

3.2 Student and employee rules should establish that a person's refusal to work or attend classes with HIV-infected individuals should be carefully monitored and documented. Appropriate accommodation or corrective or disciplinary measures may be implemented for people who refuse to work or attend classes with HIV-infected individuals.

3.3 Each System component will make its rules available to students, faculty, and staff through handbooks, manuals, brochures or any other method deemed appropriate.

3.4 Such rules must be submitted to the System General Counsel for review and approval.

4. HIV/AIDS EDUCATION PROGRAMS

4.1 Each System component is encouraged to develop or offer educational training programs on HIV/AIDS to students and employees. Programs should be tailored to the cultural, educational, language and developmental needs of the target audience.

4.2 Each System component will annually provide each employee an educational pamphlet about methods of transmission and prevention of HIV infection and relevant state laws. The Texas Department of Health educational pamphlet entitled "AIDS and the Workplace" is recommended. The pamphlet will also be provided to new employees on the first day of employment.

4.3 Institutions must make available to students, on request, one or more educational pamphlets on HIV infection developed by the TDH or similar educational materials and must include in the student handbook a statement that pamphlets are available from the institution.

4.4 Each student health center should provide information on prevention of HIV infection, including:

- (1) the value of abstinence and long-term mutual monogamy;
- (2) information on the efficacy and use of condoms;
- (3) information that offers or refers to confidential and/or anonymous HIV counseling and testing services; and
- (4) state laws relating to the transmission and conduct that may result in the transmission of HIV.

5. ELIGIBILITY FOR BENEFITS

5.1 Workers' Compensation - To qualify for Workers' Compensation or other similar benefits, state law requires that an employee provide a written statement of the date and circumstances of the possible work-related exposure to HIV antibodies and document the fact that, within 10 days or less after the exposure, the employee took a confidential HIV antibody test with a negative result indicating an absence of HIV antibodies (to rule out pre-existing infection). An employee who may have been exposed to HIV while performing duties of employment may not be required to be tested, but refusal to be tested may jeopardize Workers' Compensation benefits.

5.2 Unemployment Compensation Benefits - Each System component must inform employees that state law provides that an individual will be disqualified for Unemployment Compensation benefits:

- (1) if the Texas Workforce Commission (TWC) finds that the employee left work voluntarily rather than provide services included within the course and scope of employment to an individual infected with a communicable disease, including HIV.
- (2) if the TWC finds that the employee has been discharged from employment based on a refusal to provide services included within the course and scope of employment to an individual infected with a communicable disease, including HIV.

These disqualifications apply if the System component provided facilities, equipment, training, and supplies necessary to take reasonable precautions against infection.

5.3 Health Benefits - No System student or employee will be subjected to impermissible discrimination under a health benefits plan endorsed by the System on the basis of a positive HIV test result.

6. GUIDELINES RELATED TO LABORATORY AND HEALTH CARE PROFESSIONS TRAINING

6.1 Safety Precautions - Each System component will develop guidelines for health care workers and students in the health professions and athletic trainer programs on preventing transmission of HIV (including universal precautions) and guidelines for health care workers who have HIV infection. Each System health care worker who is involved in hands-on patient care should complete an educational course about methods of transmission and prevention of HIV infection and related conditions based on the model education program guidelines developed by the TDH and the guidelines of this regulation.

6.2 Education of Students Entering Health Professions - Each System institution offering medical, dental, nursing, allied health, counseling, and/or social work degree programs must include within the program curricula information about:

- (1) methods of transmission and methods of prevention of HIV infection;
- (2) federal and state laws, rules, and regulations concerning HIV infection and AIDS; and
- (3) the physical, emotional, and psychological stress associated with the care of patients with terminal illnesses.

- 6.3 Guidelines for Laboratory Courses - System components that offer laboratory courses requiring exposure to material that has potential for transmitting HIV should adopt safety guidelines for handling such material and distribute these guidelines to students and staff prior to such exposure.

7. HIV TESTING AND COUNSELING

- 7.1 Mandatory Testing - No programs for mandatory HIV testing of employees, students, or patients should be undertaken unless required by law or court order.
- 7.2 Voluntary Testing and Counseling - Student health centers should offer or refer students, faculty, and staff members for confidential or anonymous HIV counseling and testing services. All testing conducted by a System component will comply with the informed consent restrictions in Paragraph 7.3 and will include counseling before and after the test. Unless excepted by law, test results should be revealed to the person tested only when the opportunity is provided for immediate, individual, face-to-face counseling about:
- (1) the meaning of the test result;
 - (2) the possible need for additional testing;
 - (3) measures to prevent the transmission of HIV;
 - (4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;
 - (5) the benefits of partner notification;
 - (6) the availability of partner notification programs; and
 - (7) identification and change of high-risk behaviors.
- 7.3 Informed Consent - Unless otherwise authorized or required by law, no HIV test should be performed without informed consent of the person to be tested. Consent will be written on a separate form, or the medical record will document that the test has been explained and consent has been obtained. The consent form will state that post-test counseling will be offered or the medical record will note that the patient has been informed that post-test counseling will be offered.
- 7.4 Reporting of Test Results - HIV test results will be reported in compliance with all applicable statutory requirements, including the Communicable Disease Prevention and Control Act, Texas Health and Safety Code, Section 81.

7.5 Conditions of HIV Testing of Employees at Institution's Expense -Employees will be informed that they may request HIV testing and counseling at the expense of the System component if:

- (1) The employee documents, to the satisfaction of the System component CEO, or designee, possible exposure to HIV while performing duties of employment; and
- (2) The employee was possibly exposed to HIV in a manner that is capable of transmitting HIV as determined by guidelines developed by the Texas Department of Health and the Centers for Disease Control of the U.S. Public Health Service.

7.6 Employees who want assistance in dealing with their own or a coworker's HIV or AIDS infection may contact the component employee assistance program, if available, for counseling and referral to community services. In addition, component human resources offices can counsel employees on benefit coverage and leave availability. Employees and students may also be referred to the Texas HIV/STD InfoLine, 1-800-299-AIDS, for more information on HIV/AIDS and services such as testing and treatment providers.

8. CONFIDENTIALITY

8.1 Based on the Federal Privacy Act, the Texas Commission on Human Rights Act, and the Texas Communicable Disease Prevention and Control Act, any medical documentation or information provided by an HIV-infected employee or student to medical or management personnel must be considered confidential and private information. As such, employers are forbidden by law to disclose this information without the employee's knowledge and written consent, except as provided by law.

8.2 With written consent of the HIV-infected employee, appropriate agency officials such as medical staff, personnel representatives, and/or direct supervisors may be informed of the infected employee's conditions. Anyone who has access to confidential information is charged with maintaining strict confidentiality and privacy and with keeping documentation of the condition separate from the employee's personnel file. Any individual within an organization who breaches the HIV-infected employee's rights has committed a serious offense. This breach may be cause for litigation, resulting in both civil and criminal penalties, and may result in dismissal.

CONTACT FOR INTERPRETATION: System Human Resources Office

HISTORY: Last issued June 10, 1991, APRM B.4.14

Section 34 Rules