

HEALTH AND SAFETY CODE CHAPTER 85. ACQUIRED IMMUNE DEFICIENCY SYNDROME AND HUMAN IMMUNODEFICIENCY VIRUS INFECTION

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES

CHAPTER 85. ACQUIRED IMMUNE DEFICIENCY SYNDROME AND HUMAN

IMMUNODEFICIENCY VIRUS INFECTION

SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATION PROGRAMS

Sec. 85.001. SHORT TITLE. This chapter may be cited as the Human Immunodeficiency Virus Services Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.002. DEFINITIONS. In this chapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "Communicable disease" has the meaning assigned by Section 81.003 (Communicable Disease Prevention and Control Act).

(3) "Contact tracing" means identifying all persons who may have been exposed to an infected person and notifying them that they have been exposed, should be tested, and should seek treatment.

(4) "HIV" means human immunodeficiency virus.

(5) "State agency" means:

(A) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the Texas Constitution or a state statute and includes an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; and

(C) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

(6) "Testing program" means a medical program to test for AIDS, HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.003. DEPARTMENT AS LEAD AGENCY AND PRIMARY RESOURCE. The department, in the discharge of its duty to protect the public health, shall act as the lead agency for AIDS and HIV policy for Texas and is the primary resource for HIV education, prevention, risk reduction materials, policies, and information in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 708, Sec. 2, eff. Sept. 1, 1993.

Sec. 85.004. EDUCATION PROGRAMS. (a) The department shall develop model education programs to be available to educate the public about AIDS and HIV infection.

(b) As part of the programs, the department shall develop a model educational pamphlet about methods of transmission and prevention of HIV infection, about state laws relating to the transmission, and to conduct that may result in the transmission of HIV.

(c) The programs must be scientifically accurate and factually correct and designed to:

(1) communicate to the public knowledge about methods of transmission and prevention of HIV infection;

(2) educate the public about transmission risks in social, employment, and educational situations;

(3) educate health care workers and health facility employees about methods of transmission and prevention in their particular workplace environments; and

(4) educate the public about state laws relating to the transmission and conduct that may result in the transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.005. SPECIAL COMPONENTS OF EDUCATION PROGRAMS.

(a) The department shall include in the education programs special components designed to reach:

(1) persons with behavior conducive to HIV transmission;

(2) persons younger than 18 years of age; and

(3) minority groups.

(b) In designing education programs for ethnic minorities and in assisting local community organizations in developing education programs for minority groups, the department shall ensure that the programs reflect the nature and spread of HIV infection in minorities in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.006. EDUCATION PROGRAMS FOR DISABLED PERSONS.

(a) The department shall develop and promote HIV education and prevention programs specifically designed to address the concerns of persons with physical or mental disabilities.

(b) In designing those programs, the department shall consult persons with disabilities or consult experts in the appropriate professional disciplines.

(c) To the maximum extent possible, state-funded HIV education and prevention programs shall be accessible to persons with physical disabilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.007. EDUCATION PROGRAMS FOR MINORS. (a) The department shall give priority to developing model education programs for persons younger than 18 years of age.

(b) The materials in the education programs intended for persons younger than 18 years of age must:

(1) emphasize sexual abstinence before marriage and fidelity in marriage as the expected standard in terms of public health and the most effective ways to prevent HIV infection, sexually transmitted diseases, and unwanted pregnancies; and

(2) state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code.

(c) In addition, the materials in the education program intended for persons younger than 18 years of age must:

(1) teach that sexual activity before marriage is likely to have harmful psychological and physical consequences;

(2) teach adolescents ways to recognize and respond to unwanted physical and verbal sexual advances;

(3) teach that the use of alcohol or drugs increases a person's vulnerability to unwanted sexual advances; and

(4) emphasize the importance of attaining self-sufficiency before engaging in sexual activity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 24.01, eff. Sept. 1, 1999.

Sec. 85.008. DISTRIBUTION OF EDUCATION PROGRAMS. (a) The department shall determine where HIV education efforts are needed in this state and shall initiate programs in those areas by identifying local resources.

(b) The department shall assist communities, especially those in rural areas, in establishing self-sustaining education programs, using public and private resources.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.009. EDUCATION PROGRAMS AVAILABLE ON REQUEST. The department shall make the education programs available to local governments and private businesses on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF HEALTH CARE FACILITIES. A health care facility licensed by the department, the Texas Department of Mental Health and Mental Retardation, or the Texas Department of Human Services shall require its employees to complete an educational course about HIV infection based on the model education programs developed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.011. CONTRACTS FOR EDUCATION PROGRAMS. (a) The department may contract with any person, other than a person who

advocates or promotes conduct that violates state law, for the design, development, and distribution of education programs.

(b) This section does not restrict an education program from providing accurate information about different ways to reduce the risk of exposure to or the transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.012. MODEL WORKPLACE GUIDELINES. (a) To ensure consistent public policy, the department, in consultation with appropriate state and local agencies and private entities, shall develop model workplace guidelines concerning persons with HIV infection and related conditions.

(b) The model workplace guidelines must include provisions stating that:

(1) all employees will receive some education about methods of transmission and prevention of HIV infection and related conditions;

(2) accommodations will be made to keep persons with HIV infection employed and productive for as long as possible;

(3) the confidentiality of employee medical records will be protected;

(4) HIV-related policies will be consistent with current information from public health authorities, such as the Centers for Disease Control of the United States Public Health Service, and with state and federal law and regulations;

(5) persons with HIV infection are entitled to the same rights and opportunities as persons with other communicable diseases; and

(6) employers and employees should not engage in discrimination against persons with HIV infection unless based on accurate scientific information.

(c) The department shall develop more specific model workplace guidelines for employers in businesses with educational, correctional, health, or social service responsibilities.

(d) The department shall make the model workplace guidelines available on request.

(e) Employers should be encouraged to adopt HIV-related

workplace guidelines that incorporate, at a minimum, the guidelines established by the board under this section.

(f) This chapter does not create a new cause of action for a violation of workplace guidelines.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.013. FUNDING INFORMATION. (a) The department shall:

(1) maintain current information on public and private sources of funding for HIV-related prevention, education, treatment, and social support services; and

(2) maintain information on the type, amount, and sources of funding for HIV-related prevention, education, treatment, and social support services being provided throughout the state.

(b) To encourage and maximize the use of federal and private funds, the department shall forward the information as soon as possible after receipt to public and nonprofit agencies that may be eligible for funding and shall make the information available to public and private entities on request.

(c) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.014. TECHNICAL ASSISTANCE TO COMMUNITY ORGANIZATIONS. (a) The department shall provide technical assistance to nonprofit community organizations to maximize the use of limited resources and volunteer efforts and to expand the availability of health care, education, prevention, and social support services needed to address the HIV epidemic.

(b) The department shall provide technical assistance in:

(1) recruiting, training, and effectively using volunteers in the delivery of HIV-related services;

(2) identifying funding opportunities and sources, including information on developing sound grant proposals; and

(3) developing and implementing effective service

delivery approaches for community-based health care, education, prevention, and social support services pertaining to HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.015. CONTRACT FOR SERVICES; DURATION. (a) The department may contract with an entity to provide the services required by Subchapters A through F if:

(1) the contract would minimize duplication of effort and would deliver services cost-effectively; and

(2) the contracting entity does not advocate or promote conduct that violates state law.

(b) Subsection (a)(2) does not restrict an education program from providing accurate information about ways to reduce the risk of exposure to or transmission of HIV.

(c) The department may audit an entity contracting with the department under Subsection (a).

(d) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out Subsections (a) through (c).

(e) A contract entered into by the department under this subchapter may not be for a term of more than one year, except that a contract may be renewed without a public hearing.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.016. RULES. The board may adopt rules necessary to implement Subchapters A through F.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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 program 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.044. ADVISORY COMMITTEE. The board may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER C. HIV MEDICATION PROGRAM

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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. Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.066. ADVISORY COMMITTEE. The board may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING

Sec. 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).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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 (Texas Hospital Licensing Law) or a physician licensed under Subtitle B, Title 3, Occupations Code, 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.773, eff. Sept. 1, 2001.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.085. PHYSICIAN SUPERVISION OF MEDICAL CARE. A licensed physician shall supervise any medical care or procedure provided under a testing program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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 and Hard of Hearing;
- (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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Amended by Acts 1995, 74th Leg., ch. 835, Sec. 25, eff. Sept. 1, 1995.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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 work-related 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER F. DEMONSTRATION PROJECTS ON NURSING CARE

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

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

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

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

Sec. 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.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 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.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

SUBCHAPTER J. HOME COLLECTION KITS FOR HIV INFECTION TESTING

Sec. 85.251. DEFINITIONS. In this subchapter:

(1) "Home collection kit" means a product sold to the general public and used by an individual to collect a specimen from

the human body and to submit the specimen to a laboratory for testing and a report.

(2) "Service provider" means the manufacturer of a home collection kit or a person designated by the manufacturer to provide the services required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.252. PROHIBITIONS RELATING TO HOME COLLECTION KIT.

A person may not market, distribute, or sell a home collection kit for HIV infection testing in this state unless the kit complies with Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.253. PROHIBITIONS RELATING TO HOME TESTING. (a) A

person may not market, distribute, or sell a product to be used by a member of the public to test a specimen collected from the human body for HIV infection unless the kit complies with Chapter 431.

(b) This section does not apply to a product marketed, distributed, or sold only to physicians or other persons authorized by law to test for HIV infection a specimen collected from the human body.

(c) A person may not require an individual to be tested for HIV infection as provided in Section 81.102.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.254. PACKAGE OF SERVICES. A home collection kit

for HIV infection testing shall be sold as part of a package of services that includes:

- (1) laboratory testing by a qualified facility;
- (2) reporting of test results;
- (3) verification of positive test results;
- (4) counseling as required by this subchapter; and
- (5) information, upon request, describing how test

results and related information are stored by the service provider, how long the information is retained, and under what circumstances the information may be communicated to other persons.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.255. QUALIFIED FACILITY. A laboratory facility that conducts testing of a specimen collected with a home collection kit for HIV infection testing must comply with the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a).

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.256. ORAL REPORTING. A service provider shall report test results from a home collection kit for HIV infection testing orally to the individual tested. Notwithstanding Section 81.109, the test results may be provided by telephone.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.257. COUNSELING; COUNSELING PROTOCOLS. (a) A service provider shall provide pretesting counseling to an individual who is considering using a home collection kit for HIV infection testing. This counseling may be provided orally by telephone or through written information included with the home collection kit.

(b) At the time the test results are reported to the individual tested, the service provider shall provide counseling and appropriate referrals for care and treatment.

(c) Counseling provided by a service provider, including written information provided under Subsection (a) and referrals, must conform with counseling protocols adopted by the board. Except as provided by Section 85.256, the counseling protocols must be consistent with the requirements of Section 81.109 and the protocols adopted under Section 85.081.

(d) Counseling provided by a service provider under this section must be provided in English and in Spanish. The board may require a service provider to provide counseling in another language if the board finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

(e) A service provider, in providing counseling, may not:

(1) solicit the purchase of additional services or

products; or

(2) refer the individual being counseled to an entity:

(A) that is owned or controlled by the service provider;

(B) that owns or controls the service provider;

(C) that is owned or controlled by an entity that owns or controls the service provider; or

(D) that has another ongoing financial relationship with the service provider.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.258. LABELING. (a) A home collection kit for HIV infection testing shall meet the requirements of Chapter 431.

(b) In addition to the requirements in Subsection (a), the labeling shall explain which persons and entities will have access to the test results for the individual.

(c) In addition to the labeling requirements in Subsections (a) and (b), a home collection kit labeled in Spanish must also be available. The board may require a service provider to label a home collection kit in another language if the board finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.259. ENFORCEMENT. A home collection kit for HIV infection testing is a "device" as that term is defined in Section 431.002 and is subject to the provisions for enforcement contained in Chapter 431. Any violation of the requirement in Section 85.258 shall be subject to the enforcement provisions of Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.260. CONFIDENTIALITY. (a) Any statement that an identifiable individual has or has not been tested with a home collection kit for HIV infection testing, including a statement or assertion that the individual is positive, is negative, is at risk, or has or does not have a certain level of antigen or antibody, is

confidential as provided by Section 81.103.

(b) A person commits an offense if the person violates this section. The punishment for an offense under this section is the same as the punishment for an offense under Section 81.103.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.261. CERTAIN TECHNOLOGY PROHIBITED. A service provider may not use technology that permits the service provider to identify an individual to whom test results or counseling is provided or to identify the telephone number from which that individual is calling.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.262. REPORTS. A service provider shall report test results from a home collection kit for HIV infection testing in the manner provided by Subchapter C, Chapter 81.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.