34.04.03 HIV/AIDS in the Workplace and Learning Environment

Approved July 31, 1998
Revised June 2, 2011
Next Scheduled Review: June 2, 2016

Regulation Statement

This regulation relates to Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) as defined by the Centers for Disease Control and Prevention of the United States Public Health Service (CDC) in compliance with federal and state law.

Reason for Regulation

This regulation establishes workplace guidelines for The Texas A&M University System (system) concerning individuals with HIV/AIDS as required by Texas Health and Safety Code, Chapter 85.

Procedures and Responsibilities

1. GENERAL

   This regulation is consistent with current information from public health authorities, such as the CDC and with state and federal laws and regulations. The Texas Department of State Health Services (DSHS) acts as the lead agency for HIV/AIDS policy for Texas and is the primary resource for HIV/AIDS education, prevention, risk reduction materials, policies and information in Texas. Each state agency is required to incorporate at a minimum the model workplace guidelines developed by the DSHS.

2. HIV/AIDS IN THE WORK/LEARNING ENVIRONMENT

   2.1 Employers, employees and students will not engage in discrimination against individuals with HIV/AIDS. Employees and students with HIV/AIDS are entitled to the same rights and opportunities as individuals with other communicable diseases and/or other disabilities.

   2.2 Reasonable accommodations will be provided to employees with HIV/AIDS if necessary to keep them employed as long as they meet job performance standards and do not engage in activities on the job that current scientific information indicates may expose others to risk of transmission.

3. HIV/AIDS EDUCATION PROGRAMS

3.1 Each system member will annually provide each employee an educational pamphlet about methods of transmission and prevention of HIV infection and relevant state laws. The DSHS educational pamphlet entitled "HIV/AIDS and the Workplace" is recommended and is available online. The pamphlet will also be provided to new employees on the first day of employment.

3.2 System members must make available to students, on request, one or more educational pamphlets on HIV infection developed by the DSHS or similar educational materials and must include in the student handbook a statement that pamphlets are available from the system member.

4. ELIGIBILITY FOR BENEFITS

4.1 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 ten (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.

4.2 Unemployment Compensation Benefits – Each system member must inform employees that state law provides that an individual will be disqualified for unemployment compensation benefits if the:

(a) 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/AIDS.

(b) 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/AIDS.

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

4.3 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/AIDS test result.

5. GUIDELINES RELATED TO LABORATORY AND HEALTH CARE PROFESSIONS TRAINING

5.1 Safety Precautions – Each system member 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 with HIV/AIDS. Each system health care worker who is involved in hands-on patient care shall 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 DSHS and the guidelines of this regulation.

5.2 Education of Students Entering Health Professions – Each system member offering medical, dental, nursing, allied health, counseling and/or social work degree programs must include within the program curricula information about:

(a) methods of transmission and methods of prevention of HIV infection;

(b) federal and state laws, rules and regulations concerning HIV/AIDS; and

(c) the physical, emotional and psychological stress associated with the care of patients with terminal illnesses.

5.3 Guidelines for Laboratory Courses – System members that offer laboratory courses requiring exposure to material that has potential for transmitting HIV shall adopt safety guidelines for handling such material and distribute these guidelines to students and staff prior to such exposure.

6. HIV TESTING AND COUNSELING

6.1 Mandatory Testing – No programs for mandatory HIV testing of employees, students or patients should be undertaken unless required by law or court order.

6.2 Voluntary Testing and Counseling – Student health centers should offer or refer students, faculty and staff members for confidential or anonymous HIV/AIDS counseling and testing services. All testing conducted by a system member will comply with the informed consent restrictions in Section 6.3 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:

(a) the meaning of the test result;

(b) the possible need for additional testing;

(c) measures to prevent the transmission of HIV;

(d) 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;

(e) the benefits of partner notification;

(f) the availability of partner notification programs; and

(g) identification and change of high-risk behaviors.

6.3 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.

6.4 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, Chapter 81.

6.5 Conditions of HIV Testing of Employees at System Member's Expense – Employees will be informed that they may request HIV testing and counseling at the expense of the system member if:

(a) The employee documents, to the satisfaction of the system member chief executive officer, or designee, possible exposure to HIV while performing duties of employment; and

(b) The employee was possibly exposed to HIV in a manner that is capable of transmitting HIV as determined by guidelines developed by the DSHS and the CDC.

6.6 Employees who want assistance in dealing with their own or a coworker's HIV infection may contact the member employee assistance program, if available, for counseling and referral to community services. In addition, member 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 for more information on HIV/AIDS and services such as testing and treatment providers.

7. CONFIDENTIALITY

7.1 Based on the Federal Privacy Act, the Americans with Disabilities Act, as amended, 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.

7.2 With written consent of the HIV-infected employee, appropriate system officials such as medical staff, personnel representatives and/or direct supervisors may be informed of the infected employee's condition. 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. Employees or students found to have breached the rights of an individual with HIV/AIDS under this regulation may be disciplined, up to and including dismissal.

Related Statutes, Policies, or Requirements

Texas Department of State Health Services

HIV/AIDS and the Workplace

Tex. Health & Safety Code, Ch. 81, Texas Communicable Disease Prevention and Control Act

Tex. Health & Safety Code, Ch. 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection

Federal Privacy Act

Americans with Disabilities Act, as amended

Tex. Lab. Code Ch. 21

System Policy *08.01, Civil Rights Protections and Compliance*

System Regulation *08.01.01, Civil Rights Compliance*

Texas HIV/STD InfoLine – 1-800-299-AIDS

Member Rule Requirements

A rule is not required to supplement this regulation.

Contact Office

System Risk Management
(979) 458-6330