

/* TEXAS, administrative code, part 2 of 3 */

97.14. Fee for Providing Written Notice of a Positive HIV-related Test Result to an Applicant for Insurance

(a) An applicant for insurance must be given written notice of a positive HIV-related test result by a physician designated by the applicant, or in the absence of that designation, by the Texas Department of Health.

(b) The insurer shall pay the department a fee of \$25 to cover the cost of the department providing the written notice to the applicant for insurance.

97.15. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection

(a) The Act, 3.12, provides a mechanism by which a law enforcement officer, fire fighter, emergency medical service employee, paramedic, or a correctional officer who receives a bona fide exposure to a reportable disease, including HIV infection, in the course of employment or volunteer service may request the department or the department's designee to order testing of the person who may have exposed the worker. This section establishes guidelines to designate the criteria that constitute exposure to a reportable disease, including HIV infection. The guidelines also prescribe minimum training requirements of the department's designee who will judge if the request meets criteria establishing risk of infection with a reportable disease, including HIV infection.

(b) For the purposes of the Act, 3.12, the following guidelines are issued to designate conditions that constitute exposure to a reportable disease, including HIV infection:

(1) chickenpox, diphtheria, Haemophilus influenzae infections, influenza and flu-like illnesses, meningitis (aseptic/viral, bacterial), meningococcal infections, mumps, pertussis, polio, psittacosis, Q fever (pneumonia), rabies, rubella, and tuberculosis if there has been an examination of the throat, intubation, oral or tracheal suctioning, or mouth-to-mouth resuscitation;

(2) anthrax, acquired immune deficiency syndrome, brucellosis, dengue, hepatitis (viral, Types A, B, D, non-A/non-B), HIV infection, malaria, plague, syphilis, tularemia, epidemic typhus, viral hemorrhagic fevers, and yellow fever if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids;

(3) amebiasis, campylobacteriosis, cholera, hepatitis, (viral,

Type A), salmonellosis, shigellosis, and vibro infections, if fecal material is ingested;

(4) measles, pneumonic plague, and viral hemorrhagic fevers if the worker is in the same room, vehicle, ambulance, or other enclosed space.

(c) For the purposes of the Act, 3.12, the following guidelines prescribe minimum training requirements of the department's designee who will judge if the request meets criteria establishing risk of infection with a reportable disease, including HIV infection.

(1) The health authority for the jurisdiction in which the law enforcement officer, fire fighter, emergency medical services employee, paramedic, or correctional officer is employed with or volunteers shall review the request, presented as a sworn affidavit, and determine whether the request meets the criteria set out in subsection (b) of this section. If an exposure is judged to have occurred, the health authority will then determine whether that exposure constitutes a reasonable risk of infection to the requester. In determining risk of infection, the health authority shall follow guidance given in the current edition of the report titled "Control of Communicable Diseases in Man," published as an official report by the American Public Health Association.

(2) If the correctional officer is employed by the Texas Department of Corrections, the deputy director for health services of that agency shall review the request, presented as a sworn affidavit, and determine whether the request meets the criteria set out in subsection (b) of this section. If an exposure is judged to have occurred, the deputy director for health services shall determine whether that exposure constitutes a reasonable risk of infection to the requester. In determining risk of infection, the deputy director for health services shall follow guidance given in the current edition of the report titled "Control of Communicable Diseases in Man," published as an official report by the American Public Association.

97.16. REPEALED effective June 10, 1992

97.17. Possible Exposure of State Employees to HIV

(a) This section covers the criteria that constitute possible exposure of state employees to HIV while they are performing duties of employment with the State of Texas.

(b) The criteria that constitute possible exposure to HIV of state employees are described in 97.10(a)(2) of this title (relating to Notification of Emergency Medical Service Employee, Peace Officer, or Firefighter of Possible Exposure to a Disease).

97.18. Fee To Cover the Cost of Providing the HIV Counseling and Testing Course

(a) Purpose. The purpose of this section is to implement the provisions of Senate Bill 959, 71st Legislature, 1989, which requires that the department develop and offer a training course for persons providing HIV counseling, and charge a reasonable fee for the course.

(b) Content.

(1) 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.

(2) The course titled "HIV Serologic Test Counseling and Partner Notification Techniques" is three full days and provides participants with a notebook of guides and reference material.

(c) Fee.

(1) The fee will be \$150 for each participant whose affiliation is with a counseling and testing entity that does not contract with the department.

(2) Fees shall be made payable to the Texas Department of Health. All fees are nonrefundable and must be received by department prior to participation in the course. Accepted form of payment shall include cashiers check or money order. No other form of payment will be accepted.

(d) Notice. Notice of the training courses will be announced through correspondence to contractors and other appropriate entities from our regional coordinators (HIV trainers). The training course schedule and the contact person will also be published quarterly in the Texas Register.

97.19. Model Health Education Program/Resource Guide for HIV/ AIDS Education of School-Age Children

(a) The Texas Department of Health adopts by reference the department publication titled "Model Health Education Program/Resource Guide for HIV/AIDS Education of School-Age Children." The guide covers a model health education program suitable for school-age children and is aimed at preventing the spread of the human immunodeficiency virus (HIV), which is the cause of acquired immunodeficiency syndrome (AIDS).

(b) Copies of the guide are available for review and may be obtained from the Public Health Promotion Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78748. Copies also are available to any person or governmental agency upon request.

97.20. Model HIV/AIDS Workplace Guidelines

(a) The Department of Health adopts by reference the department

publication titled "Model HIV/AIDS Workplace Guidelines." The guidelines consist of two parts, as follows.

(1) The first part consists of general workplace guidelines concerning HIV-related policies, procedures, protocols, and education programs in the workplace. All state agencies shall adopt and all private employers are encouraged to adopt HIV-related workplace guidelines that incorporate at a minimum the general workplace guidelines,

(2) The second part consists of more specific workplace guidelines which are an extension of the general workplace guidelines in paragraph (1) of this subsection in order to address direct care providers. Those state agencies and their contractors, as well as state licensed organizations, which provide direct client services and programs shall adopt and implement workplace guidelines similar to the specific workplace guidelines.

(b) Copies of the guideline are available for review in the Public Health Promotion Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies also are available on request.

97.21. Model Policies for the Handling, Care, and Treatment of HIV/AIDS Infected Persons in the Custody of or Under the Supervision of Correctional Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers, and District Probation Departments

(a) The Department of Health adopts by reference the department publication titled "Model Policies for the Handling, Care and Treatment of HIV/ AIDS-Infected Persons in the Custody of or Under the Supervision of Correctional Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers, and District Probation Departments." The model policies consist of three sections, as follows.

(1) The first part consists of policies concerning the provision of education for employees, inmates, and probationers; provision of information and training relating to infection control procedures; provision of infection control supplies, equipment, and training; provision of access to appropriate services; and provision of confidentiality of medical records relating to HIV infection.

(2) The second part consists of policies concerning potential exposure to HIV infection while performing job duties.

(3) The third part consists of policies concerning HIV testing, segregation, and isolation of detainees in correctional facilities or specified supervisory entities. All specified entities must develop and implement HIV/AIDS workplace policies similar to the model policies.

(b) Copies of the policies are available for review in the Public Health Promotion Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available on request.

97.22. Exposure of Certain Persons to Reportable Diseases

(a) Purpose.

(1) This section provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, correctional officer, or law enforcement officer may request the mandatory testing of a person who may have exposed him/her to a reportable disease.

(2) The criteria that constitute exposure to a reportable disease are described in 97.15 of this title (relating to Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection).

(3) This section further defines to whom the local health authority may assign the authority to decide risk of exposure. In addition, the section establishes procedures and a time frame for the implementation of the steps necessary to achieve court ordered mandatory testing.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Emergency responder-An emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.

(2) Requestor-Emergency responder who presents a sworn affidavit to a local health authority to request testing of a person who may have exposed him/her to an infectious disease in the course of his/her duties.

(3) Designated health official-For the purposes of implementing the Health and Safety Code, 81 .050(d)-(e), the following physicians have been delegated by the Department of Health (department) to be the designated health officials who determine if a risk of exposure to a reportable disease has occurred:

(A) the health authority for the jurisdiction in which the emergency responder is employed;

(B) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of communicable diseases in the municipality or county served by the health department;

(C) if the health authority does not choose to make determinations of the risks of exposure and there is not a

separate physician employed by the county or municipal health department with responsibility for the control of communicable diseases, or for counties which do not have an appointed health authority, the regional director of the Texas Department of Health (department) region of which the county or municipality is a part; and

(D) for the Texas Department of Criminal Justice (TDCJ), the TDCJ deputy director of health services (Institutional Division) who must serve as the designated health official in determining risk of exposure to correctional officers employed by the TDCJ.

(4) Source-The person who may have exposed an emergency responder to a reportable, communicable disease during the emergency responder's course of duties.

(c) Steps necessary to mandate testing for a reportable communicable disease.

(1) Submitting a request for testing of a source. If an employed or volunteer emergency responder believes he or she may have been exposed to a reportable disease while discharging his or her duties, then he or she, within 72 hours, must have postmarked or submitted in person a sworn affidavit to his or her designated health official requesting that the source be tested for the reportable communicable disease(s) which is (are) of concern. The sworn, written affidavit of the requestor must contain:

(A) the name;

(B) the home address;

(C) the telephone number at work;

(D) the telephone number at home;

(E) the name and address of the emergency agency where he or she works or volunteers;

(F) an emergency telephone number;

(G) the date and time of exposure;

(H) the circumstances of the exposure;

(I) the source's symptoms, if known (e.g., rash, fever, chills, jaundice, productive cough, diarrhea, nausea/vomiting, neurologic signs, coryza, hemorrhage, other);

(J) transport designation of the source; and

(K) if known, the source's name, address, preliminary diagnosis, and probable present location.

(2) Responsibilities of the requestor. If the requestor believes he or she may have been exposed to a reportable disease and that, if infection occurs, he/she may file for worker's compensation, then the requestor must obtain an appropriate medical test which demonstrates susceptibility to the infection of concern. This test must be obtained within 10 days of the alleged exposure. The requestor should also be aware that he or she may be liable for any court costs if the source person refuses to be tested for infection with a reportable disease and the requestor takes the

matter to court and loses.

(3) Determination of exposure. The designated health official must decide within three working days of receipt of the sworn affidavit if an exposure likely to lead to an infection has occurred. The designated health official must also consult the most recent edition of Control of Communicable Diseases in Man, published by the American Public Health Association, and should also consult any other reference which may provide additional relevant information.

(4) Relating the determination of exposure.

(A) Ruling of a nonexposure. If the designated health official determines that an exposure likely to lead to an infection with a reportable disease did not occur, then he or she must so inform the requestor by letter. The letter must contain a brief explanation of the basis of the decision. The designated health official may also notify the requestor by telephone, but this does not preclude the need for a written response.

(B) Ruling of an exposure.

(i) If the designated health official determines that the conditions of exposure were such that there was a reasonable chance that infection may have occurred, then he or she must notify the requestor by registered/certified mail and request that the requestor consult the designated health official. If the situation is such that control or treatment measures are immediately advisable, then the designated health official must also make a reasonable effort to notify the requestor of what actions need to be taken.

(ii) During the consultation with the designated health official, the requestor must receive the following information both verbally and in writing:

(I) the disease(s) which may have been transmitted during the exposure;

(II) the tests that are available to detect infection;

(III) where and when to obtain testing;

(IV) the prophylactic measures which are appropriate; and

(V) the signs and symptoms of infection. (iii) If the requestor may have been exposed to HIV virus, then approved pretest counseling must be provided. The designated health official must state that he or she will proceed to locate the source and request the source to undergo testing. The designated health official must also state that if the source refuses to be tested, then the designated health official will consult with the requestor to determine if he or she wishes to pursue the matter into court. The designated health official must warn the requestor that if the matter is taken to court and the court rules that testing of the source is not required, then the requestor may be liable for court costs.

(5) Disagreement with designated health official's ruling. If the requestor does not agree with the determination of the designated health official and wants to pursue the matter further, then the requestor must submit a copy of his or her original sworn affidavit to the commissioner of health (commissioner) for an independent assessment. The petition must be within seven days of the written notification by the designated health official. The decision of the commissioner is final. If the commissioner decides that the conditions of the exposure were such that there existed a reasonable chance of exposure to a reportable disease, then the designated health official in whose jurisdiction the exposure occurred must continue action to obtain testing of the source.

(6) Notification of the source.

(A) Once the designated health official determines that an exposure with risk of transmission of a reportable disease has occurred, the designated health official must within three working days attempt to locate and notify the source or the source's legal guardian. Notification must be by hand-delivered letter which will ask the source or the source's legal guardian to contact the designated health official but will not relate the reasons for the request. The designated health official must personally converse with the source or the source's legal guardian regarding the potential transmission of a reportable disease to an emergency responder.

(B) If the source is hospitalized, incarcerated, or otherwise unable to personally consult with the designated health official, then a health professional trained in relating health information (e.g., registered or licensed Vocational nurse, disease intervention specialist, epidemiologist) must relate verbally and in writing the request for information regarding the source's current status related to certain reportable diseases.

(C) At least three attempts must be made to deliver the notice to the source or source's legal guardian. If, after three attempts, the notice has not been delivered, then the designated health official will mail the notice by registered mail to the last known address of the source or source's legal guardian.

(7) Information provided to source.

(A) Once contacted, the designated health official must relate to the source or source's legal guardian (both Verbally and in writing in a language the source can understand) that:

(i) an emergency responder has had contact with the source in a manner that transmission of disease may have occurred;

(ii) this person is now requesting information on the possible contagiousness of the source with a disease(s) reportable by law;

(iii) the source or source's legal guardian is asked to present laboratory or other medically valid evidence that he or she did

or did not have the disease(s) at the time of exposure; and
(iv) that the source or source's legal guardian is required to present this information or evidence that an appropriate specimen has been submitted for testing within 14 days of receipt of a written request for testing:

(I) the request must describe the type of test required (e.g., blood for antigen or antibody, culture) and where such a test and appropriate counseling can be obtained;

(II) the request must also state that if the source or source's legal guardian chooses not to use public health facilities for testing, then he or she is liable for any costs incurred from testing.

(B) The test results or proof that the test specimen had been taken must be in the form of a signed and dated statement from a physician or laboratory stating the specimen has been collected and the approximate date that the laboratory or other results would be ready. The proof of specimen collection must be returned to the designated health official within 17 days after receipt of the written request for testing from the designated health official. If the source or source's legal guardian already has proof of laboratory results which demonstrate that the source was or could not have been infectious at the time of the exposure to the source, then the previous results substitute for new testing.

(C) A source or the source's legal guardian who states that the source has been tested in the past and was positive for HIV or chronic hepatitis B but is unable to produce valid written results (anonymous test sites, special screens, lost records) must be asked to be retested. If they refuse, then this information must be relayed to the requestor.

(8) Source objection to determination of exposure. If the source or the source's legal guardian objects to the designated health official's decision that he or she was involved in potentially exposing an emergency responder to a reportable disease, then he or she must present a copy of his or her original sworn affidavit to the commissioner for an independent assessment. The decision of the commissioner is final.

(9) Test results. The source or the source's legal guardian has the responsibility of presenting the test result(s) to the health authority within five days of receipt. The results must show that the tested specimen was collected from the source, the date of collection, the type of test which was conducted, and the results of the test. The results must have the original signature of the physician who ordered, performed, or was responsible for the testing.

(10) Notification of the requestor. When the test results from the source are obtained, the designated health official must

arrange for an interview with the requestor. During the interview the designated health official must provide verbally and in writing the results of any testing on the source. If warranted by the test results, the designated health official must also provide recommendations for medical follow-up.

(11) Refusal to be tested. If the source refuses to be tested, a statement to that effect must be signed by the source or the source's legal guardian. If the source or the source's legal guardian refuses to sign a statement or does not comply with the written request to be tested within the allotted 14-day time interval after notification, then the designated health official will ask for a written statement from the requestor stating that the matter should or should not be referred to the district court. The written request must state that the requestor understands he or she may be liable for court costs if the court does not rule in favor of mandated testing of the source. The designated health official will then refer the request to the prosecuting attorney who represents the state in district court. The prosecuting attorney will request a hearing on the order.

(12) Court proceedings. The source has the right to an attorney at the hearing and the court will appoint an attorney for a person who cannot afford legal representation. The source or source's legal guardian cannot waive the right to an attorney unless he or she has consulted with an attorney. The court will then review the order and determine whether exposure occurred and represents a probable risk of infection. Evidence may be introduced by the attorney for the state or the attorney for the source. The court will then order testing and appropriate counseling or refuse to issue the order. If the court does not find reasonable cause to have the person tested, then the court may charge court costs to the requestor.

(13) Results of court ordered tests. If a test is ordered, the designated health official must make arrangements for appropriate counseling, specimen collection, testing, and maintenance of confidentiality of the source. The designated health official has the responsibility of notifying both the requestor and the source or source's legal guardian of the results of the testing and of any follow-up treatment and/or counseling. The designated health official must develop a protocol to code test specimens to ensure that identifying information concerning the source is destroyed as soon as testing is complete.

97.31 through 97-47. REPEALED effective July 23, 1990.

97.12. Exposure of Health-Care Personnel to HIV or AIDS

(a) Emphasis must be placed on preventing the transmission of HIV or AIDS and not on testing for its presence. Health care

personnel shall follow the guidance given in "Recommendations for Prevention of HIV Transmission in Health-Care Settings," Morbidity and Mortality Weekly Report, August 21, 1987, Volume 36, Number 2S, United States Public Health Service, Centers for Disease Control, which publication is adopted by reference. Copies are filed in the Bureau of AIDS and STD Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public review during working hours.

(b) Health-care personnel are at risk of exposure to HIV or AIDS during a medical procedure if the personnel:

- (1) have their mucous membranes or skin in contact with any body fluid or tissue (other than the patient's intact skin); and
- (2) if the procedure to be performed is an invasive procedure that involves surgical entry into tissues, cavities, or organs or the repair of major traumatic injuries, including angiographic, bronchoscopic, endoscopic, and obstetrical procedure.

97.13. Guidelines for Testing Certain Indicated Persons for Certain Diseases

(a) A court may order a person who is indicted for sexual assault or aggravated sexual assault to submit to a medical procedure or test for presence of sexually transmitted diseases or AIDS or HIV or other agent of AIDS, under authority of the Code of Criminal Procedure, Texas Codes Annotated, Article 21.31. The physician who is directed by the court to perform the medical procedure or test shall follow the rules in this section that prescribe the criteria for testing and that respect the rights of the victim of the alleged offense and the rights of the person accused.

(b) In order to protect the privacy of the person being tested, the court, in consultation with the local health authority, shall use or arrange the use of a pseudonym for the person on all requests and reports pertaining and known only to the physician, the local health authority, the person being tested, and the court. The person performing the procedures or test shall make the results available directly to the local health authority.

(c) For AIDS, HIV infection, syphilis, gonorrhea, viral hepatitis B, and genital infections from chlamydia trachomatis, the procedures and tests shall be those specified in the department's publication, Identification and Confirmation of Reportable Diseases, as adopted by reference in 97.3 of this title (relating to the Reportable Diseases and Health Conditions). For other sexually transmitted diseases, the physician shall request instructions from the commissioner or his designee.

(d) The local health authority shall meet with the victim of the alleged offense and disclose the results of the medical procedures or test; no other person shall be present during the notification unless permitted by the victim. The local health

authority shall advise the Victim of the medical implications of the test results whether or not the test results are positive or negative. The local health authority shall instruct the victim to receive further medical intervention by the victim's personal physician. If the victim resides outside the State of Texas, the notification may be made by telephone.

(e) The local health authority shall notify the person accused of the results of the procedure or test and, if the result indicates the presence of a communicable disease, shall instruct the person accused as required by the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4.02(a), and shall perform the appropriate duties and make the reports, as required by 97.5 of this title (pertaining to Reporting and Other Duties of Local Health Authorities and Regional Directors).

(f) After reporting of the results of the procedure or test to the victim and to the person accused, the local health authority shall file an affidavit with the court attesting that he or she has executed the order. Disclosure of the test results to any persons other than the victim and the accused person is prohibited under the Code of Criminal Procedure, Texas Codes Annotated Section 21.31.

(g) A local health authority may delegate any duty imposed by this section to a person who is under the local health authority's supervision. If a victim or a person tested under this section resides outside the jurisdiction of the local health authority, the notifications required by this section may be made by the local health authority in the jurisdiction where the person resides.

CHAPTER 98. HIV AND STD CONTROL
SUBCHAPTER B. HIV EDUCATION GRANT PROGRAM
TEXAS ADMINISTRATIVE CODE, part 3

SUBCHAPTER A. TEXAS HIV SERVICES GRANT PROGRAM
GENERAL PROVISIONS

98.1. Introduction

The purpose of these sections is to establish a system for the provision of services by providers to clients as authorized in the Human Immunodeficiency Virus Services (HIVS) Act, Texas Civil Statutes, Article 4419b-4, Article 2. This subchapter is adopted under the authority of the HIVS Act and the current General Appropriations Act.

98.2. Definitions

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

Act-Human Immunodeficiency Virus Services Act (Texas Civil Statutes, Article 4419b-4, Acts of the 71st Legislature, Chapter 1195, 1989 (Senate Bill 959)).

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

Applicant-A nonprofit community organization or other entity that applies to the department for approval to become a provider.

Board-The Texas Board of Health.

Case management-The assessment of a client's overall service needs and the development and implementation of a course of action or plan for meeting those needs. Case management should be family centered, community-based, interdisciplinary, and comprehensive. It is intended to assist those clients who need a variety of services. Activities which are integral to the provision of case management include:

- (A) advocacy;
- (B) mutual goal setting;
- (C) monitoring;
- (D) education;
- (E) information and referral; and
- (F) family empowerment (activities to assist the client-family to gain skills and independence in problem-solving self-advocacy, and management of the human service system; and recognize and support the right of each individual to take control of his/her own life and destiny).

Client-An individual who, under these sections, is determined by a provider to be eligible for services.

Commissioner-The commissioner of health.

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

Counseling-The provision of written and/or oral communication between a client or group of clients and a knowledgeable person in an effort to assist the client to achieve the ability to satisfactorily cope with a problem or problems.

Department-The Texas Department of Health.

Family-A group of two or more persons related by birth, marriage, or adoption who reside together. All such related persons are considered as members of one family.

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

Legally responsible person-A parent, managing conservator, or other person that is legally responsible for the support of a minor, a ward, or himself-herself.

Medical transportation-Transportation services that are required to obtain appropriate and timely AIDS/HIV services for clients.

Minor-A person who has not reached his or her 18th birthday and who has not had the disabilities of minority removed in court or who is not married or recognized as an adult by the State of Texas.

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

Program-The HIV Services Grant Program. created by Acts of the 71st Legislature, Chapter 1195, Article 2, 1989 (Texas Civil Statutes, Article 4419b-4, Article 2).

Provider-A person that has been approved by the department and that has entered into a contract with the department to deliver services purchased by the department to clients for the purposes of the Act, Article 2.

Region-Public health region of the department.

Request for proposal (RFP)-A solicitation providing guidance and instructions issued by the department to potential providers interested in submitting an application to deliver purchased services to carry out the purposes of the Act, Article 2.

Services-Individual or group counseling and other social services; home health care; medical transportation; temporary shelter; provision of food or clothing at no cost or reduced cost; and other activities determined by the department in the approval and contracting process as appropriate to carry out the intent of the Act, Article 2.

Support-The contribution of money or services necessary for a person's maintenance including food, clothing, shelter, transportation, and health care.

Texas resident-An individual who is physically present within the geographic boundaries of the state, and who;

(A) has an intent to remain within the state, whether permanently or for an indefinite period;

(B) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box); and

(C) does not claim residency in any other state or country; or

(D) is under 18 years of age and his/her parent(s), managing conservator, or guardian is a bona fide resident of Texas;

(E) is a person residing in Texas and his/her legally dependent spouse is a bona fide resident of Texas; or

(F) is an adult residing in Texas and his/her legal guardian is a bona fide resident of Texas.

98.3. Forms

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

98.4. Funds

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

98.5. Nondiscrimination

The Texas Department of Health operates in compliance with the Civil Rights Act of 1964, Public Law 88-352, Title VI, and Part 80 of Title 45, Code of Federal Regulations, so that no person will be excluded from participation, or otherwise subjected to discrimination on the grounds of race, color, national origin, or handicapping conditions. In addition and for purposes of the HIV program, discrimination solely on the basis of sexual orientation or high-risk behaviors is prohibited.

98.6. General Program Requirements

(a) As authorized by the Human Immunodeficiency Virus Services Act, the Texas Board of Health, in these sections, has established an HIV program in the Texas Department of Health (department) to provide for the delivery of services to clients.

(b) The department through the grant process shall endeavor to provide for the delivery of services to those populations which demonstrate unmet needs because of their inaccessibility and/or unavailability. The grant process shall be structured to meet these unmet needs according to criteria that include:

- (1) coordination of the use of federal, local, and private funds;
- (2) encouragement of community-based service provision and case management;
- (3) addressing of needs that are not met by other sources of funding;
- (4) provision of funding as extensively as possible across regions of the state in amounts that reflect regional needs;
- (5) encouragement of cooperation among local providers;
- (6) prevention of unnecessary duplication of services within a community; and
- (7) availability of health resources in a community.

98.7. HIV Services Advisory Committee

(a) Purpose. The HIV Services Advisory Committee (committee) is created for the purpose of advising and assisting the Texas Board of Health (board) and the Texas Department of Health (department) in planning and administering a comprehensive system of AIDS/HIV services in the State of Texas.

(b) Committee responsibilities. The responsibilities of the

committee will include the:

- (1) evaluation of existing services and unmet needs in developing AIDS/HIV grant services networks;
- (2) review of the goals and targets of the request for proposal (RFP) application packets;
- (3) evaluation of ongoing program efforts;
- (4) definition of both short-range and long-range goals and objectives for the AIDS/HIV Services Grant Program; and
- (5) development of review criteria and standards for the AIDS/HIV Services Grant Program.

(c) Committee recommendations. The program committee may identify and recommend to the department essential elements of service that should be considered in general or regional service development. The department shall consider the committee recommendations during the development of provider contracts required in 98.22 of this title (relating to Provider Application; Selection; Contract Process).

(d) Membership. The board shall appoint a 15-member statewide HIV Services Advisory Committee consisting of a:

- (1) social worker with extensive knowledge of case management in AIDS/HIV;
- (2) registered nurse with considerable expertise in caring for AIDS/HIV;
- (3) physician actively engaged in medical management of AIDS/HIV;
- (4) volunteer worker regularly involved for at least one year in an AIDS/HIV service agency;
- (5) nursing home representative with firsthand knowledge of AIDS/HIV care in the long-term care setting;
- (6) family member of a person with AIDS/ HIV;
- (7) person with HIV/AIDS;
- (8) hospital administrator from a facility providing care to substantial numbers of AIDS/HIV clients in outpatient and inpatient areas;
- (9) Texas Department of Human Services representative with broad experience in obtaining services for the AIDS/HIV client;
- (10) mental health representative involved in providing comprehensive emotional guidance to numerous clients with AIDS/HIV;
- (11) member of the religious community with experience in HIV/AIDS (clergy);
- (12) home health representative with expertise in providing care in the home for those with AIDS/HIV;
- (13) hospice representative with broad experience in working with terminally ill persons with AIDS;
- (14) person with AIDS/HIV; and
- (15) minority representative with interest and experience working

with minority groups in relation to AIDS/HIV.

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

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

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

(h) Meetings.

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

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

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

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

(5) Attendance. A record of attendance at each meeting shall be made. If a member misses two consecutive meetings, written notice shall be given to the member. A third consecutive absence from a regular meeting shall be sufficient grounds for membership termination by the board.

(6) Parliamentary procedure. Parliamentary procedures for all committee or subcommittee meetings are conducted in accordance

with the latest edition of Roberts Rules of Order, except that the chairperson may vote on any action as any other member of the committee.

(7) Conflict of interest. Any committee member having a potential conflict of interest between his/her professional affiliations and subject matter presented to the committee shall refrain from chairing the discussion and/or voting on the issue.

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

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

98.8. HIV Program Review

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

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

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

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

- (1) the demographic information on eligible individuals;
- (2) the number of clients receiving services and costs of service per client;
- (3) the fiscal and financial management reports of expenditures;
- (4) the program accomplishments;
- (5) an annual report on applicants ineligible for services; and
- (6) a report on the networking and coordination of services with other providers.

(e) Other health related data may be required by the department; however, the provider will be given 60 days advance notice prior to the end of the contract term.

(f) The department shall annually prepare a report that is available to the public consisting of summarized data regarding

the type, level, quality, and cost-effectiveness of services provided during the preceding fiscal year.

98.9. REPEALED effective December 31, 1991

AIDS/HIV SERVICES PROVIDERS

98.21. Who May Apply To Become a Provider

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

- (1) city or county health departments or districts;
- (2) community-based organizations;
- (3) public or private hospitals; and
- (4) public or private university medical center based health delivery facilities.

(b) An individual may not become a provider.

98.22. Provider Application; Selection; Contract Process

(a) To administer the program effectively and to receive the maximum benefits from available funds, the Texas Department of Health (department) shall contract for services on a request for proposal (RFP).

(b) The department shall publish a public notice of the RFP in the Texas Register at least 30 days prior to the date on which the application is due. Local published notices or direct contact by the department with potential applicants will also be utilized.

(c) After public notice has been given the department will forward the application packet within three working days of a request being received in the department's HIV Division.

(d) Complete applications at a minimum must include:

- (1) a description of the objectives established by the applicant for the conduct of the program during the contract period;
- (2) documentation that the applicant has consulted with appropriate local health department or public health district officials, health authority, community groups, and individuals with expertise in HIV education or treatment and a knowledge of the needs of the population to be served or as specified in the RFP or renewal documents;
- (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;
- (4) assurances that priority will be given to the provision of services to eligible individuals with low income; and
- (5) any other information required by these sections or requested by the department in the application package.

(e) Regional public hearings will be conducted in the region in

which the applicant(s) is located before awarding an initial grant, or grants totaling in excess of \$25,000.

(1) At least 10 days before such a public hearing, the department shall give notice to each state representative and state senator who represents any part of the region in which any part of the contracted funds will be expended.

(2) Public hearings will not be required for the renewal of a contract.

(f) Complete applications for funding will initially be reviewed by the department's HIV Division and other departmental staff and by a review panel composed in such a manner that individual panel members:

(1) are involved with health care delivery but are not employees of the department; and

(2) are not members of, employed by, or otherwise associated with a particular application under review by a particular panel.

(g) After the review described in subsection (f) of this section, the HIV Division will make the final selection of providers in the HIV Program (program); preference will be given to consortia of health care and community-based organizations which can develop or have developed comprehensive ambulatory community and home-based HIV support programs offering appropriate and compassionate care at reduced costs.

(h) Applicants approved by the program must execute contracts with the department. Applicants that are not selected will receive written notification to that effect from the department within 30 days after the awards have been approved and will be given the opportunity for an informal reconsideration conducted under the provisions of 98.28 of this title (relating to Denial of an Application To Provide AIDS/HIV Services; Procedure).

(i) A copy of amendments to program rules adopted during the term of the contract will be sent to each contractor at the time of the rule's final adoption by the Board of Health. Each contractor must acknowledge in writing the receipt of the copy and provide an assurance that they have read and understand the content of the amendments and will comply with them as part of their contractual obligation.

(j) A provider must agree to deliver the number and/or type of services during the contract period designated and accepted by the department.

(k) The program may expedite the renewal of contracts with providers so that services may be provided to clients without gaps in service.

(1) An abbreviated application format will be used to the extent deemed possible by the department.

(2) Applications for funding may be reviewed and approved by the department based upon the applicant's prior history of compliance

with the applicable law and rules, its satisfactory performance of contract provisions, and the quality of the services being provided. The quality of services provided will be verified by evaluations made by the department.

(1) Contracts executed between the department and providers under this section are governed by the requirements in the Uniform Grant and Contract Management Standards (UGCMS), 1 Texas Administrative Code 5.141-5.167.

(m) A provider must give assurances in the contract that the provider will abide by the requirements of the Human Immunodeficiency Virus Services Act, the UGCMS, and these sections.

98.23. Client Complaint, Internal Reconsideration, Due Process Requirements

(a) Client complaints.

(1) To obtain and continue provider status, an applicant for approval or a provider must have in place a procedure to resolve client complaints that assures confidentiality to the extent possible in an effective procedure. This procedure shall be made available to all clients and will be posted in a prominent place in the provider's facility. At a minimum, the complaint procedure must include:

(A) an assurance that a timely and impartial complaint investigation procedure is available;

(B) an assurance that the provider will attempt to resolve client complaints;

(C) an assurance that the provider has in place an internal complaint review procedure for client complaints; and

(D) that the results of the investigation are provided to all parties in the complaint.

(2) Failure of an applicant or provider to provide a complaint procedure for clients is grounds for the denial of an application, or modification, suspension, or termination of provider status.

(b) Internal reconsideration and due process procedures. The applicant or provider must assure that provider has in place procedures for the resolution of conflicts between the provider and an applicant for services or client.

(1) The conflict resolution procedures must include at least an opportunity for an informal reconsideration of the provider's decision to deny an individual's application for services and due process procedures for the denial, modification, suspension, and termination of the client status.

(2) Unless granted variance by the commissioner of health (commissioner) in accordance with subsection (c) of this section, the procedures must provide at least the protection to the client

that the Texas Department of Health's (department) informal reconsideration and due process hearing procedures afford to the provider.

(c) Variance. A provider may apply to the commissioner in writing for a variance from the requirements of subsection (b) (2) of this section.

(1) In considering the application for the variance, the commissioner of health may consider:

(A) the personnel and other resources available to the applicant or provider; and

(B) the nature of the services delivered by the provider.

(2) The commissioner's decision will be in writing and given to the provider by mail.

(d) Due process procedure. The due process procedure must include at least:

(1) a timely written notice to the applicant for services or client of the basis of the provider's decision and disclosure of the reasons upon which the decision is taken;

(2) an opportunity for the client to be represented by counsel;

(3) an opportunity to examine the documentary evidence, if any;

(4) an opportunity for the applicant or client to cross-examine witnesses; and

(5) a written decision rendered by an impartial referee.

(e) Opportunity for an informal reconsideration. Failure of a provider to afford an individual, whose application for services was denied, an opportunity (or an informal reconsideration; or failure to afford a client, aggrieved by the provider's decision to modify, suspend, or terminate services, the opportunity to participate in a due process procedure is grounds for termination of the providers approval and contract cancellation.

(f) Informal hearing procedures. A provider may adopt the Texas Board of Health's (board) informal hearing procedures in 1.51-1.55 of this title (relating to Informal Hearing Procedures) to satisfy the requirement for a due process procedure. A copy of the board's informal hearing procedure may be obtained from the department's Office of General Counsel, 1100 West 49th Street, Austin.

98.24. Confidentiality

(a) Confidentiality of all records is essential. All information obtained in connection with the examination, care, or services provided to any client under a program, which is carried out through a contract under these sections, shall not, without the client's consent, be disclosed, except as may be necessary to provide services to the client, or as may be required by law. Information derived from any HIV Program (program) may be disclosed:

(1) in statistical or other summary form; or
(2) in case reports, but only if the identity of the individuals diagnosed or provided care as described in the report is not disclosed and cannot be discerned.

(b) To obtain and continue provider status, all applicants or providers must have a policy in place to protect client confidentiality and must assure the Texas Department of Health that each individual participating in the provider's activities has been informed of the policy and the fact that civil and criminal penalties exist in the Communicable Disease Prevention and Control Act for a person who commits the offense of violating the confidentiality of persons, as protected under the provisions of the Act.

(c) Failure of an applicant or a provider to have a confidentiality policy and procedure in place is grounds for denial of an application or termination of the provider's approval and contract cancellation.

98.25. Model Workplace Guidelines

(a) To obtain and continue provider status, all applicants or providers must have a policy in place that is consistent and at least as comprehensive as the model guidelines for HIV/AIDS policies and education programs adopted by reference in 97.19 of this title (relating to Model HIV/AIDS Workplace Guidelines) for direct care providers and clients. Copies of the guidelines may be obtained from the Texas Department of Health, Public Health Promotion Division, 1100 West 49th Street, Austin, Texas 78756.

(b) Failure of an applicant or a provider to have workplace guidelines and procedures in place is grounds for denial of an application or termination of the provider's approval and contract cancellation.

98.26. Payment for Services

(a) Reimbursement to providers for services delivered will be contingent upon a valid signed contract between the provider and the Texas Department of Health (department).

(b) The department will reimburse the provider for services rendered in accordance with the contract between the provider and the department. The department will only be obligated to pay those funds as specified and expended in accordance with the contract.

(c) The department will require documentation of the delivery of services by the provider, as follows.

(1) Requests for payment will be denied if they are incomplete, submitted on an improper form, contain inaccurate information, or are not submitted within 90 days from the date services were delivered.

(2) Requests for payment which have been denied must be resubmitted in correct form within 30 days from the notice of denial or within the initial 90-day filing deadline, whichever is later.

(3) Corrections must be made on the original request for payment form if possible, and a copy of the denial notice must accompany the resubmitted request for payment.

(4) If a new request is submitted, the original request must accompany the new request for payment form.

(d) Overpayments made to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, deducted from current claims due to be paid to the provider.

(e) The opportunity for a due process hearing is available for the resolution of conflicts relating to payment issues between the department and a provider in accordance with 98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure).

(f) Other provisions of this section notwithstanding, a provider may request, in writing, a one-time advance payment with proper justification and the concurrence of the department. The amount of the advance will be determined by the amount and term of the contract; however, such an advance will not exceed one-sixth of the total amount allocated to the provider's 12-month contract.

98.27. Denial of Application; Modification, Suspension, Termination of Provider Approval; Criteria

(a) The Texas Department of Health (department) may, for Cause, deny the application and modify, suspend, or terminate the approval of a provider after written notice, and written notice of an opportunity for an informal reconsideration or an opportunity for a due process have been given to the provider.

(b) An application may be denied if the:

(1) applicant has not submitted a complete application;

(2) applicant is not an entity listed in 98.21 of this title (relating to Who May Apply for Provider Status);

(3) applicant has not provided the assurances, policies, procedures required by these sections relating to client confidentiality, client complaints, informal reconsideration. due process, and workplace guidelines; and

(4) applicant fails or refuses to execute a contract with the department.

(c) Provider status may be modified, suspended, or terminated for:

(1) providing false or misleading information which is material to the Continuance of provider status;

(2) failure of the provider to perform in accordance with the

requirements of the Human Immunodeficiency Virus Services Act and the applicable provisions of the General Appropriations Act;

(3) failure of the provider to perform in accordance with these sections;

(4) failure of the provider to perform in accordance with the provisions of the contract; or

(5) failure of the provider to perform in accordance with the rules prescribed in the Uniform Grants and Contracts Management Standards (UGCMS), 1 Texas Administrative Code 5.141-5.167.

(d) The department may suspend or cancel payment for services delivered if false or fraudulent requests for payments are submitted by a provider.

(e) A provider's contract may not be terminated during the pendency of due process hearing. Payments due to be paid to providers may be withheld during the pendency of a hearing, and payments shall resume if the final determination is in favor of the provider.

98.28. Denial of an Application To Provide AIDS/HIV Services; Procedure

(a) An applicant aggrieved by the HIV Program's (program) decision to deny an application to become a provider may request an informal reconsideration from the Texas Department of Health (department).

(b) An applicant must request an informal reconsideration in writing.

(c) The applicant's request must be received by the department within 20 days from the receipt of the program's decision letter.

(d) Failure to request reconsideration and notify the department within the 20-day period for writ-ten notice will be deemed a waiver of the opportunity for an informal reconsideration and the proposed action will become final.

(e) The informal reconsideration will be conducted by an impartial panel of three members appointed by the commissioner of health. The members may not have participated in the program's decision to deny the application.

(f) The informal reconsideration will consist primarily of a review by the panel of the applicant's documentation; the Board of Health's relevant rules; the authorizing statute; and the current General Appropriations Act; however, the panel may permit the applicant requesting the reconsideration to appear before the panel if desired.

(g) The panel will affirm, reverse, or modify the program's decision. The panel's decision will be binding on the program and the applicant.

98.29. Modification, Suspension, or Termination of Provider

Status; Procedure

(a) Before the Texas Department of Health (department) may modify, suspend, or terminate a provider's status, the department must offer the provider the opportunity for a due process hearing.

(b) The Administrative Procedure and Texas Register Act, 12-20, Texas Civil Statutes, Article 6252-13a, does not apply to the modification, suspension, or termination of provider status under this section. The department shall conduct due process hearings in accordance with the Board of Health's (board) informal hearing procedures, 1.51-1.55 of this title (relating to Informal Hearing Procedures). Copies of the board's informal hearing procedures may be obtained from the department's Office of General Counsel, 1100 West 49th Street, Austin, Texas 78756.

98.30. Exceptions from Appeals Procedure

The Texas Department of Health (department) is not required to offer an informal reconsideration or an informal hearing for the denial, modification, suspension, or termination of provider status, if the department's actions result from the exhaustion of funds appropriated to the department for the administration of the Human Immunodeficiency Virus Services Act, Article 2.

98.31. Public Complaints

(a) Filing of complaints.

(1) Anyone may complain to the Texas Department of Health (department) alleging that a provider has violated a statute or one of the rules of this subchapter. A person wishing to complain about an alleged violation of the rules shall notify the director of the HIV Division.

(2) The notification of a complaint must be in writing and mailed to the Director, HIV Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(3) Upon receipt of a complaint, the director shall send an acknowledgment letter to the complainant within 15 days, if the complainant is identified to the director.

(b) Investigation of complaints.

(1) The department shall not investigate complaints which lack sufficient information. The department reserves the right to request additional, verifiable information from the complainant. If the additional information is not provided within 30 days, the department may close the complaint file without further action.

(2) The department will not investigate complaints regarding the personal activities of employees of a provider.

(3) Anonymous complaints shall be investigated by the department, provided sufficient, verifiable information is submitted.

(4) Written complaints received by the HIV Division will be

screened to determine the appropriate action.

(A) If it is determined to be a client complaint, 98.23 of this title (relating to Client Complaint, Internal Reconsideration, Due Process Requirements) will apply.

(B) If applicable, other complaints will be referred to the appropriate licensing and/or regulatory authority for investigation.

(C) Any complaints not covered by subparagraph (A) or (B) of this paragraph will be investigated by the appropriate department staff.

(5) The identity of the person(s) involved in filing the complaint and the person on whose behalf the complaint is filed will be privileged information of the department, to the extent allowed by law.

(c) Actions after investigation. The department shall have 60 days after receipt of complaint (or of additional information requested) to investigate the complaint. If at the end of this 60-day period the department has been unable to complete its investigation, the department will so notify the complainant, if known, in writing. The department will then have an additional 60 days to complete its investigation. After investigation, the department shall take one of the following actions.

(1) The department may determine that an allegation is groundless and dismiss the complaint.

(2) The department may determine that a provider has violated a statute or one of the rules of this subchapter and shall issue a written warning to the provider to cease the activity and/or take corrective action within a specified period of time.

(A) If the provider complies with the written warning, the department shall close the complaint file.

(B) If the provider fails to comply with the written warning, the department may modify, suspend, or terminate the provider status in accordance with 98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure).

(d) Notification of results of investigation. Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the AIDS Services Advisory Committee, the complainant, and the accused party.

AIDS/HIV SERVICES; CLIENTS

98.41. Eligibility Requirements

(a) Full eligibility.

(1) An individual will be eligible to receive services when the individual receives provider approval after meeting all of the following requirements except as provided in paragraph (2) of

this subsection:

- (A) have at least an HIV infection;
 - (B) is a bona fide resident of Texas, and furnishes documentation of residency as required by 98.43 of this title (relating to Residency; Documentation of Residency); and
 - (C) makes application through the provider.
- (2) Family and significant others are exempt from eligibility requirements for paragraph (1) of this subsection for purposes of receiving counseling services.
- (3) To maintain eligibility for receipt of services, a client must meet the requirements of paragraph (1) of this subsection, maintain Texas residency, and, upon demand, furnish evidence of residency to the provider or the department in accordance with 98.43 of this title (relating to Residency; Documentation of Residency);
- (4) To regain eligibility for receipt of services, a former client must reapply for services in cases where eligibility has lapsed.
- (b) Conditional eligibility.
- (1) Conditional eligibility is available pending final approval of an application for services.
- (A) Under the limitations set out in subparagraph (B) of this paragraph, an applicant may be conditionally approved to receive services for a period not to exceed 30 days.
- (B) Conditional eligibility may be granted only for the following reasons:
- (i) collection of the applicant's required documentation;
 - (ii) translation of the applicant's required documentation into English; and
 - (iii) review of the application by the provider and the provider's final decision to grant or refuse eligibility to the applicant.
- (2) A provider may not grant conditional eligibility to any applicant that the provider knows or should know is not and will not be fully eligible for services.
- (3) The contract of a provider may be terminated and provider approval revoked in accordance with 98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure) if a provider grants conditional eligibility to an applicant that the provider knows or should know is not and will not be fully eligible for services.

98.42. Applications

- (a) Persons meeting the eligibility requirements set forth in 98.41 of this title (relating to Eligibility Requirements) must make application for benefits through a provider.
- (b) A complete application shall consist of all of the

following:

- (1) a properly completed, signed, and original application for services, on a form provided or approved by the department;
- (2) documentation which is acceptable to the department to provide evidence of bona fide Texas residency (see 98.43 of this title (relating to Residency; Documentation of Residency)); and
- (3) a statement signed by the individual or a licensed physician that the applicant has an HIV infection or AIDS.

(c) All documentation required for eligibility determination, as provided in subsection (b) of this section, must be provided in English or have an accurate English translation attached to the document. English translations may be provided by the applicant or the provider taking the application.

(d) An application shall be deemed incomplete for any one of the following reasons:

- (1) failure to provide information requested in the application form;
- (2) lack of supporting documents;
- (3) lack of, or improper signatures:
 - (A) the application must be signed by the applicant;
 - (B) an application signed with a "mark" by the applicant must be attested to by a notary; or
 - (C) if a member of the applicant's immediate family signs for the applicant, the reason they are doing so must be stated on the application;
- (4) lack of legal residency documentation;
- (5) failure to provide financial data; or
- (6) failure to provide an English translation of all documentation required for eligibility determination.

(e) Incomplete applications will be returned to the submitting applicant for correction, with the deficiencies noted.

(f) If the application is incomplete, the provider may not determine the applicant's eligibility for the client to receive services. The eligibility date will be determined when a properly completed, signed, and notarized, if necessary, application is received. Services may not begin until an eligibility date has been established.

(g) The eligibility date will be based on the date the provider receives a complete application for services as specified in this section.

98.43. Residency; Documentation of Residency

(a) For a definition of the term "Texas resident," see 98.2 of this title (relating to Definitions).

(b) The provider must require and the client must present documentation of Texas residency during the provider's review of the client's application for services. Documents that may provide

evidence of residency include:

(1) documents issued by the state or federal government, e.g., driver's license or identification card issued by the Texas Department of Public Safety; a motor vehicle registration or automobile registration form; a current Texas voter registration card; or a current Texas Medicaid card;

(2) documents relating to the applicant's income, e.g., a recent payroll check; retirement or social security check; or disability check; and

(3) documents relating to the applicant's living expenses, e.g., rental or lease receipts; utility payment receipt.

(c) All documents must be in the name of the applicant unless the applicant is a dependent minor or a ward. In that event, the documents may be in the name of the legally responsible person.

(d) A provider must verify residency periodically during the receipt of services and if requested by the provider, a client must provide additional documentation.

(e) Providers may obtain a list of possible sources of documentation of residency from the department.

98.44.

Denial of Application; Modification, Suspension, or Termination of Client Benefits; Criteria

(a) Individuals applying for services or clients from a provider will have their application denied or services modified, suspended, or terminated by the provider for any of the following reasons.

(1) Services will be denied, modified, suspended, or terminated if:

(A) the person is not a bona fide resident of the state;

(B) the person fails or refuses to provide the periodic documentation of residency required in 98.41 of this title (relating to Eligibility Requirements);

(C) the person does not have at least an HIV infection; or

(D) the client notifies the provider in writing that he/she no longer wants to receive services.

(2) Services may be denied, modified, suspended, or terminated if:

(A) the applicant or client submits an application form or any document required in support of the application which contains a misstatement of fact which is material to the provider's determination that the applicant-client is eligible for program benefits;

(B) the client submits false claims to the provider;

(C) the client has not requested or utilized services during any period of 12 consecutive months;

(D) program funds are curtailed; or

(E) funds allocated for payments on behalf of the client are exhausted.

(b) Denial, modification, suspension, or termination of services to a client will be governed by the provider's informal reconsideration and due process procedures required by 98.28 of this title (relating to Denial of an Application To Provide AIDS/HIV Services; Procedure), 98.29 of this title (relating to Modification, Suspension, or Termination of Provider Status; Procedure), and 98.30 of this title (relating to Exceptions from Appeals Procedure).

SUBCHAPTER B. HIV EDUCATION GRANT PROGRAMS

GENERAL PROVISIONS

98.61. Introduction

The purpose of this subchapter is to establish a system for the provision of education programs as authorized by the Human Immunodeficiency Virus Services Act, Texas Civil Statutes, Article 441 9b. This subchapter is adopted under the authority of the Act and the current General Appropriations Act.