

/* Part 2, Texas, follows: */

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.

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.

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 HI'. 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.

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.

85.009. Education Programs Available on Request

The department shall make the education programs available to local governments and private businesses on request.

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.

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.

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.

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.

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.

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.

85.016. Rules

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

SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS

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.

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 pro-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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

85.044. Advisory Committee

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

SUBCHAPTER C. HIV MEDICATION PROGRAM

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.

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.

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.

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.

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The department may institute a sliding fee scale to help eligible HIV infected individuals purchase medications under the program.

85.066. Advisory Committee

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

SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING

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).

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).

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 or a physician licensed under the Medical Practice Act 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.

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.

85.085. Physician Supervision of Medical Care

A licensed physician shall supervise any medical care or procedure provided under a testing program.

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).

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.

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.

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.

SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS

(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.

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.

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;'
- (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.

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.

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.

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 workrelated 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.

SUBCHAPTER F. DEMONSTRATION PROJECTS ON NURSING CARE

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.

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.

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

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.

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).

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.

SUBCHAPTER II. HIV MEDICATION PROGRAM [REPEALED]

85.161 to 85.164.

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

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.'

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.

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.

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.

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.

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.

TEXAS, part 5

CHAPTER 162. BLOOD BANKS

Section

162.001. Definitions.

162.002. Required Testing of Blood.

- 162.003. Confidentiality of Blood Bank Records.
- 162.004. Disclosure Required by Law.
- 162.005. Disclosure to Certain Physicians or Person Tested.
- 162.006. Disclosure to Other Blood Banks.
- 162.007. Report to Recipient or Transfuser.
- 162.008. Procedures for Notifying Blood Recipients.
- 162.009. Provision of Blood Samples for Testing.
- 162.010. General Powers and Duties of Court.
- 162.011. Discovery Powers of Court.
- 162.012. Limitation on Liability.
- 162.013. Civil Penalty.
- 162.014. Criminal Penalty.

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In this chapter:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, the American Association of Blood Banks, and the American Red Cross Blood Services and that is registered or licensed by the Office of Biologics of the United States Food and Drug Administration and accredited by the American Association of Blood Banks or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center,

regional collection center, tissue bank, and transfusion service.

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

(3) "HIV" means human immunodeficiency virus.

162.002. Required Testing of Blood

(a) For each donation of blood, a blood bank shall require the donor to submit to tests for infectious diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

(b) A blood bank is not required to obtain the donor's informed consent before administering tests for infectious diseases and is not required to provide counseling concerning the test results.

162.003. Confidentiality of Blood Bank Records

The medical and donor records of a blood bank are confidential and may not be disclosed except as provided by this chapter.

162.004. Disclosure Required by Law

A blood bank shall disclose all information required by law, including HIV test results, to:

(1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);

(2) the Centers for Disease Control of the United States Public Health Service, as required by federal law or regulation; or

(3) any other local, state, or federal entity, as required by law, rule, or regulation.

162.005. Disclosure to Certain Physicians or Person Tested

A blood bank shall disclose blood test results and the name of the person tested to:

- (1) the physician or other person authorized by law who ordered the test;
- (2) the physician attending the person tested; or
- (3) the person tested or a person legally authorized to consent to the test on behalf of the person tested.

162.006. Disclosure to Other Blood Banks

(a) A blood bank may report to other blood banks the name of a donor with a possible infectious disease according to positive blood test results.

(b) A blood bank that reports a donor's name to other blood banks under this section may not disclose the infectious disease that the donor has or is suspected of having.

(c) A blood bank that reports as provided by this section does not breach a confidence arising out of any confidential relationship.

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(a) A blood bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other infectious disease to:

(1) the hospital or other facility in which the blood was transfused or provided;

(2) the physician who transfused the infected blood; or

(3) the recipient of the blood.

(b) A blood bank may report blood test results for statistical purposes.

(c) A blood bank that reports test results under this section may not disclose the name of the donor or person tested or any other information that could result in the disclosure of the donor's or person's identity, including an address, social security number, designated recipient, or replacement donation information.

162.008. Procedures for Notifying Blood Recipients

Each hospital, physician, health agency, and other transfuser of blood shall strictly follow the official "Operation Look-Back" procedure of the American Association of Blood Banks or the American Red Cross Blood Services in notifying past and future recipients of blood. The only exception to notifying a recipient of blood is if the recipient is dead or cannot be located.

162.009. Provision of Blood Samples for Testing

On request, a blood bank shall provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

162.010. General Powers and Duties of Court

(a) After notice and hearing, a court of competent jurisdiction may require a blood bank to provide a recipient of blood from the blood bank with the results of tests of the blood of each donor of blood transfused into the recipient. The court may also require the test results to be given to an heir, parent, or guardian of the recipient, or a personal representative of the recipient's estate. The test results must be given in accordance with Section 162.007.

(b) If a blood bank fails to or cannot provide the test results as required under Subsection (a), the court may require the blood bank to use every reasonable effort, including any effort directed by the court, to locate any donor of the blood in question. The court may require the blood bank to obtain from that donor a blood sample for testing and may direct the blood bank to provide blood test results, samples of the blood, or both, to an independent laboratory designated by the court for testing. The results of the independent laboratory test must be made available to the recipient, an heir, parent, or guardian of the recipient, or the personal representative of the recipient's estate.

(c) Section 162.002 applies if a blood bank requires a donor to provide a blood sample for testing under Subsection (b).

(d) If a blood test result is positive or if the blood bank fails

to or cannot provide a blood test result or blood sample as required under Subsection (b), the court may require the blood bank to provide any information that the court determines is necessary to satisfy the court that the blood bank has complied in all respects with this section and the court's order or has demonstrated every reasonable effort to comply. The blood bank must provide the information to the judge of the court in camera and under seal.

(e) The court may not disclose to any other person the name of a donor or any other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information. However, on the motion of any party, the court shall order the taking of the donor's deposition at a specified time and in a manner that maintains the donor's anonymity.

(f) The court may not deny a party's attorney the right to orally cross-examine the donor.

162.011. Discovery Powers of Court

(a) A court of competent jurisdiction shall exercise the discovery powers granted in this section on the motion of any party. The court shall exercise the powers to the extent reasonably necessary to obtain information from or relating to a donor if that information:

(1) is reasonably calculated to lead to the discovery of admissible evidence regarding any matter relevant to the subject matter of a pending proceeding; and

(2) cannot otherwise be obtained without threatening the

disclosure of the name of a donor or other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information.

(b) This section does not apply to information obtainable under section 162.010.

(c) The court may:

(1) order the deposition of any witness, including a donor, orally, on written questions and cross-questions propounded by the parties, or both; and

(2) compel the production of documents and things.

(d) A subpoena issued to a donor under this section may be served only in person at the donor's residence address. On a showing that service in person cannot be made at the donor's residence despite diligent efforts to do so, the court may order service on the donor at other places as directed by the court.

(e) The court shall deliver to the parties all discoverable information obtained through the exercise of powers provided by this section, including testimony, documents, or things. The court shall first delete from that information the name of any donor or any other information that could result in the disclosure of a donor's identity, including information described by Subsection (a)(2). The court may substitute fictitious names, such as "John Doe," or make other changes as necessary to protect the confidentiality of the donor's identity in the information made available to the parties.

(f) The court may not disclose

confidential donor information to any person other than a person acting under Section 162.010(e) or (f). That person may not disclose the information to others.

(g) The exercise of the court's powers under this section is governed by the Texas Rules of Civil Procedure, except to the extent of any conflict with this section.

162.012. Limitation on Liability

(a) A donor who provides information or blood samples under Section 162.010 is immune from all liability arising out of the donation of the blood transfused into a recipient.

(b) A blood bank is not liable for the disclosure of information to a court in accordance with an order issued under Sections 162.010(b)-(f).

(c) A presumption of negligence or causation does not attach to a donor's positive test result if the test result is obtained after the donation of blood or blood components that is the subject of discovery as provided under Section 162.011.

(d) Except as provided by Section 162.013 or 162.014, a person who negligently or intentionally discloses blood bank records in violation of this chapter is liable only for actual damages resulting from the negligent or intentional disclosure.

(e) This chapter does not give

rise to any liability under Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act).

162.013. civil Penalty

(a) A person who is injured by a violation of Section 162.006, 162.007, 162.010, or 162.011 may bring a civil action for damages. In addition, any person may bring an action to restrain such a violation or threatened violation.

(b) If it is found in a civil action that a person has violated a section listed in Subsection (a), that person is liable for:

- (1) actual damages;
- (2) a civil penalty of not more than \$1,000; and
- (3) court costs and reasonable attorney's fees incurred by the person bringing the action.

162.014. Criminal Penalty

(a) A person commits an offense if the person discloses information in violation of Section 162.006, 162.007, 162.010, or 162.011.

(b) An offense under this section is a Class C misdemeanor.

(c) Each disclosure made in violation of Section 162.006 or 162.007 constitutes a separate offense.

CHAPTER 163. EDUCATION PROGRAM ABOUT SEXUAL CONDUCT AND SUBSTANCE ABUSE

Section

163.001. Program.

163.002. Instructional Elements.

163.001. Program

(a) The department shall develop a model public health education program suitable for school-age children and shall make the program available to any person on request. The program should emphasize:

(1) that abstinence from sexual intercourse is the most effective protection against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually;

(2) that abstinence from sexual intercourse outside of lawful marriage is the expected societal standard for school-age unmarried persons; and

(3) the physical, emotional, and psychological dangers of substance abuse, including the risk of acquired immune deficiency syndrome (AIDS) through the sharing of needles during intravenous drug usage.

(b) Course materials and instruction relating to sexual education or sexually transmitted diseases should be age appropriate.

163.002. Instructional Elements

Course materials and instruction relating to sexual education or sexually transmitted diseases should include:

(1) an emphasis on sexual abstinence as the only completely reliable method of avoiding unwanted teenage pregnancy and sexually transmitted diseases;

(2) an emphasis on the importance of self-control, responsibility, and ethical conduct in making decisions relating

to sexual behavior;

(3) statistics, based on the latest medical information, that indicate the efficacy of the various forms of contraception;

(4) information concerning the laws relating to the financial responsibilities associated with pregnancy, childbirth, and child rearing;

(5) information concerning the laws prohibiting sexual abuse and the legal and counseling options available to victims of sexual abuse;

(6) Information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as the importance of avoiding the sexual exploitation of other persons;

(7) psychologically sound methods of resisting unwanted peer pressure; and

(8) emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under Section 21.06, Penal Code.

CHAPTER 248. SPECIAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Section

248.001. Short Title.

248.002. Definitions.

248.003. Exemptions.

[Sections 248.004 to 248.020 reserved for expansion]

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

- 248.021. License Required.
- 248.022. Application.
- 248.023. Issuance and Renewal of License.
- 248.024. Fees.
- 248.025. Nontransferability; Posting.
- 248.026. Duties of Board.
- 248.027. Construction Standards.
- 248.028. Inspections; Investigations.

[Sections 248.029 to 248.050 reserved for expansion]

SUBCHAPTER C. GENERAL ENFORCEMENT

- 248.051. License Denial, Suspension, or Revocation.
- 248.052. Emergency Suspension.
- 248.053. Injunction.
- 248.054. Civil Penalty.
- 248.055. Criminal Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

- 248.001. Short Title

This chapter may be cited as the Texas Special Care Facility Licensing Act.

In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Medical care" means care that is:
 - (A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;
 - (B) under the continued supervision of a physician; and
 - (C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.
- (4) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:
 - (A) promote and maintain health;
 - (B) prevent illness and disability;
 - (C) manage health care during acute and chronic phases of illness;
 - (D) provide guidance and counseling of individuals and families; and
 - (E) provide referrals to physicians, other health care providers, and community resources when appropriate.
- (5) "Person" means an individual, organization, establishment, or association of any kind.
- (6) "Resident" means an individual accepted for care in a special care facility.
- (7) "Services" means the provision of medical or nursing care, assistance, or treatment by special care facility personnel, volunteers, or other qualified individuals, agencies, or staff of an organization or other entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(8) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

248.003. Exemptions

This chapter does not apply to:

- (1) a home health agency required to be licensed under Chapter 142;
- (2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);
- (3) an institution required to be licensed under Chapter 242;
- (4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);
- (5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);
- (6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act); or
- (7) a person providing medical or nursing care or services under a license or permit issued under other state law.

[Sections 248.004 to 248.020 reserved for expansion]

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

248.021. License Required

A person may not establish or operate a special care facility unless the person holds a license issued under this chapter.

248.022. Application

(a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with board rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

248.023. Issuance and Renewal of License

(a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and the rules adopted by the board.

(b) A license shall be renewed at the times and in accordance with the rules established by the board.

248.024. Fees

(a) The board shall establish a license application fee in the amount of \$25 for each facility bed or \$200, whichever is greater, but the fees may not exceed \$1,000.

(b) The board may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. The fees may include construction plan review and inspection fees.

(c) All fees collected under this

chapter are nonrefundable.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund and may be appropriated only to the department to administer this chapter.

248.025. Nontransferability; Posting

(a) A license issued under this chapter is not transferable or assignable.

(b) A special care facility shall post in plain sight the license issued under this chapter.

248.026. Duties of Board

(a) The board shall adopt rules necessary to implement this chapter. The rules must establish minimum standards for special care facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this chapter;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

(3) residents' rights;

(4) medical and nursing care and services provided by a license holder;

(5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;

(6) records of care and services kept by the license holder, including the disposal or destruction of those records;

(7) safety, fire prevention, and sanitary provisions;

(8) transfer of residents in a medically appropriate manner from

or to a special care facility;

(9) construction plan approval and inspection; and

(10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the board to establish the qualifications of licensed health care providers or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state law.

248.027. Construction Standards

(a) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction must conform to the minimum standards established by the board.

(b) Construction of a facility is subject to construction plan approval by the department.

248.028. Inspections; Investigations

(a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this chapter.

(b) The department shall investigate each complaint received regarding a special care facility.

SUBCHAPTER C. GENERAL ENFORCEMENT

248.051. License Denial, Suspension, or Revocation

(a) The department may deny, revoke, or suspend a license issued under this chapter for a violation of this chapter or the rules adopted under this chapter.

(b) Except as provided by Section 248.052, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the

department's rules for a contested case hearing and by the Administrative Procedure and Texas Register Act.

248.052. Emergency Suspension

The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and the Administrative Procedure and Texas Register Act.

248.053. Injunction

(a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the board under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other person has violated this chapter or board rules, the district court shall grant the injunctive relief that the facts warrant.

248.054. Civil Penalty

A license holder or person who violates this chapter or a rule

adopted by the board under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than \$1,000 for each day of violation. All penalties collected under this section shall be deposited to the credit of the General Revenue Fund.

248.055. Criminal Penalty

(a) A person who knowingly establishes or operates a special care facility without a license issued under this chapter commits an offense.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

[Chapters 249 to 260 reserved for expansion]