

Texas

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April 8, 2011

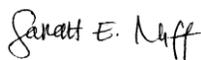
To the Reader:

The *Compendium of State HIV Testing Laws* describes key state HIV testing laws and policies. Each state's HIV testing laws are unique and many have undergone revision or supplementation since the release of the [CDC's 2006 HIV testing recommendations](#). The *Compendium* is designed to help clinicians understand HIV testing laws and to implement sound HIV testing policies. It should not, however, be used as an official legal document.

The NCCC provides clinical consultation for healthcare providers as part of the HRSA [AIDS Education and Training Centers](#) program. Clinicians with questions about HIV testing are encouraged to call the *National HIV Telephone Consultation Service (Warmline)* at (800) 933-3413. The Warmline also provides advice on HIV management, including antiretroviral treatment. Other NCCC consultation services include: the National Clinicians' Post-Exposure Prophylaxis Hotline ([PEPLINE](#)) at (888) 448-4911 for advice on managing occupational exposures to HIV and hepatitis; and the National Perinatal Consultation and Referral Service ([Perinatal HIV Hotline](#)) at (888) 448-8765 for consultation on preventing mother-to-child transmission of HIV.

We update the *Compendium* periodically, but it is beyond the scope of the project to perform updates and verification concurrent with all changes. We encourage readers to send updates (with citations when possible) and comments to Sarah Neff at neffs@nccc.ucsf.edu.

Thank you,



Sarah E. Neff, MPH
Director of Research and Evaluation

&



Ronald H. Goldschmidt, MD
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The Warmline, PEPLINE, and Perinatal Hotline are part of the National HIV/AIDS Clinicians' Consultation Center (NCCC) based at San Francisco General Hospital/ UCSF. The NCCC is a component of the **AIDS Education and Training Centers (AETC) Program** funded by the Ryan White CARE Act of the **Health Resources and Services Administration (HRSA)** HIV/AIDS Bureau in partnership with the **Centers for Disease Control and Prevention (CDC)**.

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Definitions and Helpful Resources

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Definitions Commonly Used Nationally

- **Anonymous Testing** – Patient’s name is not recorded with test results.
- **Confidential** – Patient’s name is recorded with test results.
- **HIV Prevention Counseling** – Refers to an interactive process of assessing risk, recognizing specific behaviors that increase the risk for acquiring or transmitting HIV and developing a plan to take specific steps to reduce risks.¹
 - **Pre-test counseling** can include: (1) discussing HIV, risk factors and prevention methods; (2) explaining the meaning of positive and negative test results and their implications; (3) assessing the patient’s personal and social supports; (4) determining the patient’s readiness to cope with test results; (5) discussing disclosure of test results to others; and (6) advising the patient if reporting positive test results to health authorities is required.
 - **Post-test counseling** can include: (1) informing the patient of the results and meaning of the test results; (2) providing education about avoiding risks of sexual and injection drug exposures; and, for patients who test positive, (3) assessing the impact of test results for the patient and family; (3) explaining treatment options; (4) discussing partner counseling and disclosure of test results to others; and (5) initiating a support and treatment plan.
- **General Consent** – Consent for HIV screening is included in the general medical consent.
- **HIV** – Human Immunodeficiency Virus.
- **Informed Consent** – A process of communication between patient and provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. Elements of informed consent typically include providing oral or written information regarding HIV, the risks and benefits of testing, the implications of HIV test results, how test results will be communicated, and the opportunity to ask questions.¹
- **Name-based reporting** – Cases are reported by patient name (required in all states except HI and VT).
- **Opt-in** – Patients typically are provided pre-HIV test counseling and must consent specifically to an HIV-antibody test, either orally or in writing.²
- **Opt-out** – Performing HIV screening after notifying the patient that: the test will be performed; and the patient may elect to decline or defer testing. Assent is inferred unless the patient declines testing.¹
- **Routine Testing** – HIV screening that is performed routinely during health-care encounters.
- **Rapid Testing** – Testing with any of the six FDA-approved rapid HIV tests that produce results in 30 minutes or less.³
- **Specific Consent** – Consent for the HIV screening is separate from the general medical consent.

Helpful Resources

CDC Recommendations and Guidelines: <http://www.cdc.gov/hiv/topics/testing/guideline.htm>

Emergency Department Implementation Guide: <http://edhivtestguide.org/>

Prenatal HIV Testing Website: <http://www.cdc.gov/hiv/topics/perinatal/1test2lives/>

For questions or comments about the compendium, contact NCCC: neffs@nccc.ucsf.edu

Clinicians with questions about HIV testing can call the Warmline at 800-933-3413.

¹ Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings. MMWR Recomm Rep. 2006 Sep 22;55(RR-14):1-17; quiz CE1-4. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

² <http://www.cdc.gov/mmwr/PDF/wk/mm5145.pdf>

³ <http://www.cdc.gov/hiv/topics/testing/resources/factsheets/rt-lab.htm>

Texas

A Quick Reference Guide for Clinicians to Texas HIV Testing Laws

April 8, 2011

This Quick Reference Guide for clinicians is a summary of relevant Texas state HIV testing laws. Note that if a section in this Quick Reference Guide reads "no specific provisions were found," provisions actually might exist for this topic within the state's statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Texas HIV testing laws, please refer to the section of the Compendium that follows this Quick Reference Guide.

Informed Consent

- Informed consent required; may be oral or in writing.
- HIV testing may be included in general medical consent.

Counseling

- Post-test counseling is required with HIV positive test results.

Provisos of Testing

- **Anonymous**
 - Anonymous testing is available at designated anonymous testing sites.
- **Rapid**
 - No specific provisions regarding rapid testing were found.
- **Routine**
 - No specific provisions regarding routine testing were found.

Disclosure

- Notification to partners of a possible exposure to HIV is required.

Minor/Adolescent Testing

- Minors may consent to services for communicable diseases, HIV explicitly included.

Texas

Perinatal Quick Reference Guide:

A Guide to Texas Perinatal HIV Testing Laws for Clinicians

April 8, 2011

This Perinatal Quick Reference Guide for clinicians is a summary of relevant Texas perinatal state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Texas HIV testing laws, please refer to the corresponding section of the *State HIV Testing Laws Compendium* (www.nccc.ucsf.edu), “Testing of pregnant women and/or newborns.”

Prenatal

- Testing of pregnant women in prenatal care is required at the first examination or visit and is through the opt-out process (with documentation).
- Testing of pregnant women in prenatal care is required in the third trimester and is through the opt-out process (with documentation).

Labor & Delivery

- Testing pregnant women presenting to labor or delivery is required upon admittance for delivery and is through the opt-out process (with documentation).

Neonatal

- Testing of newborns is required if the mother was not tested in the third trimester or at labor and delivery and is through the opt-out process (with documentation).

Other

- **Testing Procedure** (see *Compendium* for full provisions) at first prenatal exam and delivery:
 - (A) Distribute to the woman printed materials about HIV/AIDS provided by the Department of Health and note on the woman's medical record that the distribution of material was made; must include: (1) the incidence and mode of transmission of HIV/AIDS; (2) how being infected with HIV/AIDS could affect the health of their child; (3) the available treatment to prevent maternal-infant HIV transmission; (4) methods to prevent the transmission of HIV.
 - (B) Verbally notify the woman that an HIV test will be performed if the patient does not object and note on the medical records that verbal notification was given:
 - (1) advise the woman that the result of the HIV test taken under this action is confidential, not anonymous, and explain the difference between an anonymous and confidential HIV test; and
 - (2) if the woman objects, the physician or other person may not conduct the test and shall refer the woman to an anonymous testing site or instruct the woman about anonymous testing methods.
- **HIV+ Post-test Information and Counseling** (see *Compendium* for full provisions):
 - Information relating to treatment of HIV/AIDS (in another language if needed and in a manner and in terms understandable to a person who may be illiterate as necessary and if resources permit)
 - Face-to-face counseling must include: (1) the meaning of the test result; (2) the possible need for additional testing; (3) measures to prevent the perinatal transmission of HIV; (4) the availability health care services (e.g., mental health care, nearby social & support services); (5) the benefits and availability of partner notification; (6) increased understanding of HIV infection; (7) explanation of the potential need for confirmatory HIV testing; (8) explanation of behavior changes to decrease the potential of HIV transmission; (9) encouragement to seek appropriate medical care; (10) encouragement to notify persons with whom there has been contact capable of transmitting HIV.

Texas
State Policies Relating to HIV Testing, 2011

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Texas Statutes and Codes Annotated

Family Code.....Pages 5-9
Insurance Code.....Pages 10-12
Code of Criminal Procedure.....Pages 13-14
Education Code.....Page 15
Health & Safety Code.....Pages 16-40
Government Code.....Pages 41-42
Occupations Code.....Page 43

Texas Administrative Code [TAC]

Title 25: Health Services
Part 1: Department of State Health Services
Chapter 97: Communicable Diseases.....Page 44-54

	Policy Category	Type	Section Code(s)
RESTRICTIONS/ MANDATES	Restrictions on use of HIV test	Policy cancellation prohibited upon HIV diagnosis or treatment	Ins §1202.052
		Insurance companies may not administer HIV testing on unfair basis	Ins §545.052
	Mandatory testing within the criminal justice system	Persons charged with a sex offense	CrimProc Art.21.31 Hlth&Saf §81.102 TAC §97.138
		Juveniles convicted of a sex offense	Family §54.033 Hlth&Saf §81.102
		Occupational exposure – law enforcement officers, correctional facility employees	Hlth&Saf §81.050 Hlth&Saf §81.102
		All inmates with no records of HIV positive results	Gov’t §501.054
		All inmates eligible for release	Gov’t §501.054
	Mandatory testing outside of the criminal justice system	Occupational exposure – emergency medical services	Hlth&Saf §81.050 Hlth&Saf §81.102
		State mental health patients	Hlth&Saf §81.102
		Occupational exposure – health care workers, department may test source patient	Hlth&Saf §81.107 Hlth&Saf §85.201

PRE-TESTING		Occupational exposure – state employees may request testing	Hlth&Saf §85.116 TAC §97.140	
		Blood/organ/anatomical donations	Hlth&Saf §162.002 Hlth&Saf §81.102	
		Pregnant women	Hlth&Saf §81.090	
	Mandatory offering of HIV/AIDS information and/or testing		Persons seeking marriage licenses must receive printed materials about HIV	Family §2.009 Family §2.010 Family §2.404
			State must make HIV information available to the public	Hlth&Saf §85.004
			Institutes of higher education must provide HIV brochures	Education §51.919
			Pregnant women shall receive printed materials regarding HIV before testing	Hlth&Saf §81.090
			Confidential testing must be available in all regions	Hlth&Saf §85.082 Hlth&Saf §85.088
			State department of health must distribute HIV info to all new state employees	Hlth&Saf §85.111
			All inmates and employees of correctional facilities must participate in HIV education program	Gov't §501.054
		Informed consent		Consent required – general consent sufficient
			Consent required; may be written or oral (with documentation)	Hlth&Saf §81.105
			Written consent required for insurance testing	Ins. §21.21-4 Ins §545.053
			Consent not necessary for testing blood donations	Hlth&Saf § 162.002
	Counseling requirements		Mandated post-test counseling for HIV positive results	Hlth&Saf §81.109
			Mandatory pre- and post-test counseling for those using a home-test kit	Hlth&Saf §85.257
			HIV counseling must be offered to victims of sex offenses	CrimProc Art.56.02
			Counseling must be provided with any mandatory testing	Hlth&Saf §81.102

	Anonymous testing	State-funded HIV testing sites must offer anonymous testing	TAC §97.145
POST-TESTING	Disclosure/confidentiality	HIV test results as confidential	TAC §97.146
		Partner notification	Hlth&Saf §81.051
		Exceptions to confidentiality	Hlth&Saf §81.103
		Disclosure of HIV status of sex offender to victim	Family §54.033 CrimProc Art.21.31
		Disclosure to emergency medical services	Hlth&Saf §81.050 Hlth&Saf §81.103
		Penalties for unlawful disclosure	Hlth&Saf §81.103 Hlth&Saf §81.104
	Reporting	Electronic or paper, name-based reporting of each person who has or is suspected of having HIV or is an HIV-exposed infant within 7 days	Hlth&Saf §81.043 Hlth&Saf §81.044 TAC §97.132 TAC §97.133 TAC §97.134
		Persons required to report	TAC §97.132(1)-(2),(4),(5)
		Department's Texas HIV/AIDS specific case report forms required for all diagnoses of HIV/AIDS infection	TAC §97.133 (2)(a)(b)
		All CD4 counts for adults and adolescents over the age of 12, All HIV viral loads (detectable and undetectable), Positive and negative HIV DNA or RNA virologic test results for infants up to 3 y.o., and HIV genotype resistance results (FASTA files) must be reported	TAC §97.133 (3)
Blood banks – code-based reporting		Hlth&Saf §162.004 Hlth&Saf §162.007	
	Results from home-test kits must be reported	Health § 85.256	
OTHER	Testing of pregnant women and/or newborns	Pregnant women in prenatal care at the first examination or visit – opt-out testing	Hlth&Saf §81.090
		Pregnant women in prenatal care in the third trimester – opt-out testing	Hlth&Saf §81.090 (a-1), (k)
		Pregnant women presenting to labor and delivery if results are not in the medical record – opt-out testing	Hlth&Saf §81.090 (c-1), (k)

	Newborns if mother was not tested in third trimester of prenatal care or presenting to labor and delivery	Hlth&Saf §81.090 (c-2), (k)
	Pre-test printed materials about AIDS and HIV must be given to the patient and must be noted in the medical record	Hlth&Saf §81.090
	Verbal notification of testing and right to decline must be noted in the medical record	Hlth&Saf §81.090
	Post-test information and counseling for HIV+ results by physician, provider, or referral	Hlth&Saf §81.090
Testing of minors/adolescents	Minors may consent to services for infectious, contagious, or communicable diseases	Family §32.003
	Minors may consent to HIV testing	Family §32.003
	Provider may, but is not required to, inform parent or guardian	Family §32.003
Rapid HIV testing	No related laws found	
Training and education of health care providers	Department of Health must establish training program for HIV counselors	Hlth&Saf §85.087 TAC §97.141

Recommended Resources

Texas Statutes

<http://tlo2.tlc.state.tx.us/statutes/statutes.html>

Texas Administrative Code

<http://www.sos.state.tx.us/tac/>

Texas Department of State Health Services

<http://www.tdh.state.tx.us/>

Texas Department of State Health Services – Policy and Legal Resources

<http://www.dshs.state.tx.us/hivstd/policy/policy4.shtm>

Family Code

TX Family Code §	Code Language
§ 2.009	<p>Issuance of License</p> <p>(a) Except as provided by Subsections (b) and (d), the county clerk may not issue a license if either applicant:</p> <ul style="list-style-type: none"> (1) fails to provide the information required by this subchapter; (2) fails to submit proof of age and identity; (3) is under 16 years of age and has not been granted a court order as provided by Section 2.103; (4) is 16 years of age or older but under 18 years of age and has not presented at least one of the following: <ul style="list-style-type: none"> (A) parental consent as provided by Section 2.102; (B) documents establishing that a prior marriage of the applicant has been dissolved; or (C) a court order as provided by Section 2.103; (5) checks "false" in response to a statement in the application, except as provided by Subsection (b) or (d), or fails to make a required declaration in an affidavit required of an absent applicant; or (6) indicates that the applicant has been divorced by a decree of a court of this state within the last 30 days, unless: <ul style="list-style-type: none"> (A) the applicants were divorced from each other; or (B) the prohibition against remarriage is waived as provided by Section 6.802. <p>(b) If an applicant checks "false" in response to the statement "I am not presently married and the other applicant is not presently married," the county clerk shall inquire as to whether the applicant is presently married to the other applicant. If the applicant states that the applicant is currently married to the other applicant, the county clerk shall record that statement on the license before the administration of the oath. The county clerk may not refuse to issue a license on the ground that the applicants are already married to each other.</p> <p>(c) On the proper execution of the application, the clerk shall:</p> <ul style="list-style-type: none"> (1) prepare the license; (2) enter on the license the names of the licensees, the date that the license is issued, and, if applicable, the name of the person appointed to act as proxy for an absent applicant, if any; (3) record the time at which the license was issued; (4) distribute to each applicant printed materials about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) and note on the license that the distribution was made; and (5) distribute to each applicant a premarital education handbook provided by the attorney general under Section 2.014. <p>(d) The county clerk may not refuse to issue a license to an applicant on the ground that the applicant checked "false" in response to the statement "I am not presently delinquent in the payment of court-ordered child</p>

TX Family Code §	Code Language
	support."
§ 2.010	<p>AIDS Information</p> <p>Materials providing information about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) shall be prepared and provided to the clerk by the Texas Department of Health and shall be designed to inform the applicants about:</p> <p>(1) the incidence and mode of transmission of AIDS and HIV;</p> <p>(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and</p> <p>(3) available and appropriate counseling services regarding AIDS and HIV infection.</p>
§ 2.404	<p>Recording of Declaration of Informal Marriage</p> <p>(a) The county clerk shall:</p> <p>(1) determine that all necessary information is recorded on the declaration of informal marriage form and that all necessary documents are submitted to the clerk;</p> <p>(2) administer the oath to each party to the declaration;</p> <p>(3) have each party sign the declaration in the clerk's presence; and</p> <p>(4) execute the clerk's certificate to the declaration.</p> <p>(b) The county clerk may not certify or record the declaration if:</p> <p>(1) either party fails to supply any information or provide any document required by this subchapter;</p> <p>(2) either party is under 18 years of age; or</p> <p>(3) either party checks "false" in response to the statement of relationship to the other party.</p> <p>(c) On execution of the declaration, the county clerk shall record the declaration and all documents submitted with the declaration or note a summary of them on the declaration form, deliver the original of the declaration to the parties, and send a copy to the bureau of vital statistics.</p> <p>(d) A declaration recorded as provided in this section is prima facie evidence of the marriage of the parties.</p> <p>(e) At the time the parties sign the declaration, the clerk shall distribute to each party printed materials about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). The clerk shall note on the declaration that the distribution was made. The materials shall be prepared and provided to the clerk by the Texas Department of Health and shall be designed to inform the parties about:</p>

TX Family Code §	Code Language
	<p>(1) the incidence and mode of transmission of AIDS and HIV;</p> <p>(2) the local availability of medical procedures, including voluntary testing, designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and</p> <p>(3) available and appropriate counseling services regarding AIDS and HIV infection.</p>
§ 32.003	<p>Consent to Treatment by Child</p> <p>(a) A child may consent to medical, dental, psychological, and surgical treatment for the child by a licensed physician or dentist if the child:</p> <p>(1) is on active duty with the armed services of the United States of America;</p> <p>(2) is:</p> <p>(A) 16 years of age or older and resides separate and apart from the child's parents, managing conservator, or guardian, with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of the residence; and</p> <p>(B) managing the child's own financial affairs, regardless of the source of the income;</p> <p>(3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health, including all diseases within the scope of Section 81.041, Health and Safety Code;</p> <p>(4) is unmarried and pregnant and consents to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy;</p> <p>(5) consents to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition directly related to drug or chemical use; or</p> <p>(6) is unmarried, is the parent of a child, and has actual custody of his or her child and consents to medical, dental, psychological, or surgical treatment for the child.</p> <p>(b) Consent by a child to medical, dental, psychological, and surgical treatment under this section is not subject to disaffirmance because of minority.</p> <p>(c) Consent of the parents, managing conservator, or guardian of a child is not necessary in order to authorize hospital, medical, surgical, or dental care under this section.</p> <p>(d) A licensed physician, dentist, or psychologist may, with or without the consent of a child who is a patient, advise the parents, managing conservator, or guardian of the child of the treatment given to or needed by the child.</p> <p>(e) A physician, dentist, psychologist, hospital, or medical facility is not</p>

TX Family Code §	Code Language
	<p>liable for the examination and treatment of a child under this section except for the provider's or the facility's own acts of negligence.</p> <p>(f) A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment.</p>
§ 54.033	<p>Sexually Transmitted Disease, AIDS, and HIV Testing</p> <p>(a) A child found at the conclusion of an adjudication hearing under Section 54.03 of this code to have engaged in delinquent conduct that included a violation of Sections 21.11(a)(1), 22.011, or 22.021, Penal Code, shall undergo a medical procedure or test at the direction of the juvenile court designed to show or help show whether the child has a sexually transmitted disease, acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the child to undergo the procedure or test on the court's own motion or on the request of the victim of the delinquent conduct.</p> <p>(b) If the child or another person who has the power to consent to medical treatment for the child refuses to submit voluntarily or consent to the procedure or test, the court shall require the child to submit to the procedure or test.</p> <p>(c) The person performing the procedure or test shall make the test results available to the local health authority. The local health authority shall be required to notify the victim of the delinquent conduct and the person found to have engaged in the delinquent conduct of the test result.</p> <p>(d) The state may not use the fact that a medical procedure or test was performed on a child under this section or use the results of the procedure or test in any proceeding arising out of the delinquent conduct.</p> <p>(e) Testing under this section shall be conducted in accordance with written infectious disease control protocols adopted by the Texas Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the child and the victim of the delinquent conduct.</p> <p>(f) Nothing in this section allows a court to release a test result to anyone other than a person specifically authorized under this section. Section 81.103(d), Health and Safety Code, may not be construed to allow the disclosure of test results under this section except as provided by this section.</p>
§ 261.314	<p>Testing</p> <p>(a) The department shall provide testing as necessary for the welfare of a</p>

TX Family Code §	Code Language
	<p>child who the department believes, after an investigation under this chapter, has been sexually abused, including human immunodeficiency virus (HIV) testing of a child who was abused in a manner by which HIV may be transmitted.</p> <p>(b) Except as provided by Subsection (c), the results of a test under this section are confidential.</p> <p>(c) If requested, the department shall report the results of a test under this section to:</p> <ul style="list-style-type: none">(1) a court having jurisdiction of a proceeding involving the child or a proceeding involving a person suspected of abusing the child;(2) a person responsible for the care and custody of the child as a foster parent; and(3) a person seeking to adopt the child.

Insurance Code	
TX Insurance Code §	Code Language
§ 545.051	<p>HIV-related Testing Authorized</p> <p>An issuer may request or require an applicant to take an HIV-related test in connection with the application.</p>
§ 545.052	<p>Nondiscriminatory Basis Required</p> <p>(a) An issuer that requests or requires applicants to take an HIV-related test must request or require the test on a nondiscriminatory basis.</p> <p>(b) An issuer may require an applicant to take an HIV-related test only if:</p> <ol style="list-style-type: none"> (1) the test is based on the applicant's current medical condition or medical history; or (2) underwriting guidelines for the coverage amounts require all applicants in the risk class to be tested. <p>(c) In determining who will be requested or required to take an HIV-related test, an issuer may not use the marital status, occupation, sex, beneficiary designation, or territorial classification, including zip code, of an applicant.</p>
§ 545.053	<p>Explanation and Authorization Required</p> <p>(a) An issuer that requests or requires an applicant to take an HIV-related test in connection with an application must:</p> <ol style="list-style-type: none"> (1) provide an explanation to the applicant, or another person legally authorized to consent to the test, of how the test will be used; and (2) obtain a written authorization from the person to whom the explanation is provided. <p>(b) The authorization must:</p> <ol style="list-style-type: none"> (1) be on a form adopted by the commissioner; and (2) be separate from any other document presented to the applicant or other person legally authorized to consent to the test.
§ 545.054	<p>Inquiries Regarding Previous Tests</p> <p>(a) An issuer may inquire whether an applicant has:</p> <ol style="list-style-type: none"> (1) tested positive on an HIV-related test; or (2) been diagnosed with HIV or AIDS. <p>(b) An issuer may not inquire whether an applicant has been tested for or has received a negative result from a specific test for:</p> <ol style="list-style-type: none"> (1) exposure to HIV; or (2) a sickness or a medical condition derived from infection with HIV.
§ 545.055	<p>Notice of Positive Test Result: Fee</p>

TX Insurance Code §	Code Language
	<p>(a) An applicant must be given written notice of a positive HIV-related test result by:</p> <ul style="list-style-type: none"> (1) a physician designated by the applicant; or (2) the Texas Department of Health, if the applicant has not designated a physician. <p>(b) The Texas Department of Health by rule may set a fee, not to exceed \$25, to cover the cost of giving written notice under this section.</p>
§ 545.056	<p>Adverse Underwriting Decision; Test Protocol Rules</p> <p>An issuer may not make an adverse underwriting decision based on a positive HIV-related test unless a test protocol established by commissioner rule is followed.</p>
§ 545.057	<p>Confidentiality of Test Result Required</p> <p>(a) An HIV-related test result is confidential.</p> <p>(b) An issuer may not release or disclose the test result or otherwise allow the test result to become known except as:</p> <ul style="list-style-type: none"> (1) required by law; or (2) requested or authorized in writing by the applicant or a person legally authorized to consent to the test on the applicant's behalf. <p>(c) A test result released under Subsection (b)(2) may be released only to:</p> <ul style="list-style-type: none"> (1) the applicant; (2) a person legally authorized to consent to the test; (3) a licensed physician, medical practitioner, or other person designated by the applicant; (4) an insurance medical information exchange under procedures designed to ensure confidentiality, including the use of general codes that cover results of tests for other diseases or conditions not related to AIDS, or for the preparation of statistical reports that do not disclose the identity of any particular applicant; (5) a reinsurer, if the reinsurer is involved in the underwriting process, under procedures designed to ensure confidentiality; (6) persons within the issuer's organization who have the responsibility to make underwriting decisions for the issuer; or (7) outside legal counsel that needs the information to effectively represent the issuer regarding the applicant.
§ 1202.052	<p>Cancellation Prohibited for AIDS or HIV</p> <p>(a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.</p> <p>(b) Except as provided by Subsection (c), an insurer that delivers or issues</p>

TX Insurance Code §	Code Language
	<p>for delivery an individual accident and health insurance policy in this state may not cancel that policy during its term because the insured:</p> <ul style="list-style-type: none">(1) has been diagnosed as having AIDS or HIV;(2) has been treated for AIDS or HIV; or(3) is being treated for AIDS or HIV. <p>(c) The insurer may cancel the policy for:</p> <ul style="list-style-type: none">(1) failure to pay a premium when due; or(2) fraud or misrepresentation in obtaining coverage by not disclosing a diagnosis of an AIDS or HIV-related condition. <p>(d) The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this section.</p>

Code of Criminal Procedure	
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TX Criminal Procedure Code §	Code Insurance
art. 21.31	<p>Testing for AIDS and Certain Other Diseases</p> <p>a) A person who is indicted for or who waives indictment for an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court on the court's own motion or on the request of the victim of the alleged offense, undergo a standard diagnostic test approved by the United States Food and Drug Administration for human immunodeficiency virus (HIV) infection and other sexually transmitted diseases. If the person refuses to submit voluntarily to the test, the court shall require the person to submit to the test. On request of the victim of the alleged offense, the court shall order the defendant to undergo the test not later than 48 hours after an indictment for the offense is presented against the defendant or the defendant waives indictment. Except as provided by Subsection (b-1), the court may require a defendant previously required under this article to undergo a diagnostic test on indictment for an offense to undergo a subsequent test only after conviction of the offense. A person performing a test under this subsection shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the test results to the victim of the alleged offense and to the defendant.</p> <p>(a-1) If the victim requests the testing of the defendant and a law enforcement agency is unable to locate the defendant during the 48-hour period allowed for that testing under Subsection (a), the running of the 48-hour period is tolled until the law enforcement agency locates the defendant and the defendant is present in the jurisdiction.</p> <p>(b) The court shall order a person who is charged with an offense under Section 22.11, Penal Code, to undergo in the manner provided by Subsection (a) a diagnostic test designed to show or help show whether the person has HIV, hepatitis A, hepatitis B, tuberculosis, or any other disease designated as a reportable disease under Section 81.048, Health and Safety Code. The person charged with the offense shall pay the costs of testing under this subsection.</p> <p>(b-1) If the results of a diagnostic test conducted under Subsection (a) or (b) are positive for HIV, the court shall order the defendant to undergo any necessary additional testing within a reasonable time after the test results are released.</p> <p>(c) The state may not use the fact that a test was performed on a person under Subsection (a) or use the results of a test conducted under Subsection (a) in any criminal proceeding arising out of the alleged offense.</p> <p>(d) Testing under this article shall be conducted in accordance with</p>

TX Criminal Procedure Code §	Code Insurance
	<p>written infectious disease control protocols adopted by the Texas Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the person accused and any victim of the alleged offense.</p> <p>(e) This article does not permit a court to release a test result to anyone other than those authorized by law, and the provisions of Section 81.103(d), Health and Safety Code, may not be construed to allow that disclosure.</p>
art. 46A.01	<p>Testing; segregation; disclosure</p> <p>(a) In this article "AIDS" and "HIV" have the meanings assigned those terms by Section 81.101, Health and Safety Code.</p> <p>(b) A county or municipality may test an inmate confined in the county or municipal jail or in a contract facility authorized by Article 5115d, Revised Statutes, or Article 5115e, Revised Statutes, to determine the proper medical treatment of the inmate or the proper social management of the inmate or other inmates in the jail or facility.</p> <p>(c) If the county or municipality determines that an inmate has a positive test result for AIDS or HIV, the county or municipality may segregate the inmate from other inmates in the jail or facility.</p> <p>(d) This article does not provide a duty to test for AIDS or HIV, and a cause of action does not arise under this article from a failure to test for AIDS or HIV.</p>
art. 56.02	<p>Crime victims' rights</p> <p>(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:</p> <p>(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code;</p>

Education Code

TX Education Code §	Code Language
§ 51.919	<p>HIV and AIDS Policy; Information Dissemination</p> <p>(a) In this section:</p> <p>(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.</p> <p>(2) "HIV" means human immunodeficiency virus.</p> <p>(3) "Institution of higher education" has the meaning assigned by Section 61.003 of this code.</p> <p>(b) Each institution of higher education shall make available the institution's policy on HIV infection and AIDS to students, faculty, and staff members by including the policy in the student handbook and personnel handbook if practicable or by any other method.</p> <p>(c) Each institution of higher education shall make available to students, on request, the educational pamphlet on HIV infection developed by the Texas Department of Health and shall include in the student handbook a statement that the pamphlet is available from the institution.</p> <p>(d) The student health center of each institution of higher education shall provide clear, accurate information on how to prevent the transmission of HIV infection, including:</p> <p>(1) the value of abstinence and long-term mutual monogamy;</p> <p>(2) information on the efficacy and use of condoms;</p> <p>(3) offering of or referring students, faculty, or staff members to anonymous HIV counseling and testing services; and</p> <p>(4) state laws relating to the transmission and to conduct that may result in the transmission of HIV.</p> <p>(e) The curricula of medical, dental, nursing, allied health, counseling, and social work degree programs of institutions of higher education shall:</p> <p>(1) include information about:</p> <p>(A) methods of transmission and methods of prevention of HIV infection; and</p> <p>(B) federal and state laws, rules, and regulations concerning HIV infection and AIDS; and</p> <p>(2) give special attention to the physical, emotional, and psychological stress associated with the care of patients with terminal illnesses.</p>
§ 61.082	<p>Research</p> <p>(a) The board shall:</p> <p>(1) encourage institutions of higher education and the faculty of those institutions to individually or through collaborative effort conduct human immunodeficiency virus (HIV) related research; and</p> <p>(2) recognize achievements in basic and applied HIV-related research.</p> <p>(b) The board shall encourage and fund applied and basic HIV-related research through its ongoing research programs, including the Advanced</p>

	Technology and Advanced Research Programs.
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Health and Safety Code	
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TX Health & Safety Code §	Code Language
§ 81.041	<p>Reportable Diseases</p> <p>(a) The board shall identify each communicable disease or health condition that shall be reported under this chapter.</p> <p>(b) The board shall classify each reportable disease according to its nature and the severity of its effect on the public health.</p> <p>(c) The board shall maintain and revise as necessary the list of reportable diseases.</p> <p>(d) The board may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.</p> <p>(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the board shall require reports.</p> <p>(f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without board rule or action. The commissioner shall issue appropriate instructions relating to complying with the reporting requirements of this section.</p>
§ 81.043	<p>(b) Except as provided by Subsection (c), a health authority shall report reportable diseases to the department's central office at least as frequently as the interval set by board rule.</p> <p>(c) A health authority each week shall report to the department's central office all cases reported to the authority during the previous week of:</p> <ol style="list-style-type: none"> (1) acquired immune deficiency syndrome; and (2) human immunodeficiency virus infection. <p>(d) A health authority must include in a report filed under Subsection (c) all information required by the department for purposes of this section or other law, including:</p> <ol style="list-style-type: none"> (1) an infected person's city and county of residence, age, gender, race, ethnicity, and national origin; and (2) the method by which the disease was transmitted.
§ 81.044	<p>Reporting Procedures</p> <p>(a) The board shall prescribe the form and method of reporting under this chapter, which may be in writing, by telephone, by electronic data transmission, or by other means.</p>

TX Health & Safety Code §	Code Language
	<p>(b) The board may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:</p> <ol style="list-style-type: none"> (1) the patient's name, address, age, sex, race, and occupation; (2) the date of onset of the disease or condition; (3) the probable source of infection; and (4) the name of the attending physician or dentist. <p>(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the reporting procedure would cause the information to be unduly delayed.</p> <p>(d) For a case of acquired immune deficiency syndrome or human immunodeficiency virus infection, the department shall require the reports to contain:</p> <ol style="list-style-type: none"> (1) the information described by Subsection (b); and (2) the patient's ethnicity, national origin, and city and county of residence.
§ 81.050	<p>Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection</p> <p>(a) The board by rule shall prescribe the criteria that constitute exposure to reportable diseases, including HIV infection. The criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.</p> <p>(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection:</p> <ol style="list-style-type: none"> (1) a law enforcement officer; (2) a fire fighter; (3) an emergency medical service employee or paramedic; (4) a correctional officer; (5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code; OR (6) an employee of a juvenile probation department <p>(c) A request under this section may be made only if the person:</p> <ol style="list-style-type: none"> (1) has experienced the exposure in the course of the person's employment or volunteer service; (2) believes that the exposure places the person at risk of a reportable disease, including HIV infection; and (3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request. <p>(d) The department or the department's designee who meets the</p>

TX Health & Safety Code §	Code Language
	<p>minimum training requirements prescribed by board rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease, including HIV infection.</p> <p>(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:</p> <ol style="list-style-type: none"> (1) state the grounds and provisions of the order, including the factual basis for its issuance; (2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases, including HIV infection; and (3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test. <p>(f) If the person who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or the department's designee, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the person has consulted with an attorney.</p> <p>(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by board rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases, including HIV infection, or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not reasonable cause for the request.</p> <p>(h) The department or the department's designee shall inform the person who requested the order of the results of the test. If the person subject to the order is found to have a reportable disease, the department or the department's designee shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The department or the department's designee shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.</p> <p>(i) HIV counseling and testing conducted under this section must</p>

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	<p>conform to the model protocol on HIV counseling and testing prescribed by the department.</p> <p>(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease, including HIV infection, must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease, including HIV infection.</p> <p>(k) A person listed in Subsection (b) who may have been exposed to a reportable disease, including HIV infection, may not be required to be tested.</p> <p>(l) In this section "HIV" and "test result" have the meanings assigned by Section 81.101.</p>
§ 81.051	<p>Partner Notification Programs; HIV Infection</p> <p>(a) The department shall establish programs for partner notification and referral services.</p> <p>(b) The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.</p> <p>(c) If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.</p> <p>(d) An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of the:</p> <ol style="list-style-type: none"> (1) methods of transmission and prevention of HIV infection; (2) telephone numbers and addresses of HIV antibody testing sites; <p>and</p> <ol style="list-style-type: none"> (3) existence of local HIV support groups, mental health services, and medical facilities. <p>(e) The employee may not disclose:</p> <ol style="list-style-type: none"> (1) the name of or other identifying information concerning the identity of the person who gave the partner's name; or (2) the date or period of the partner's exposure. <p>(f) If the person with HIV infection also makes the notification, the person should provide the information listed in Subsection (d).</p>

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	<p>(g) A partner notification program shall be carried out as follows:</p> <p>(1) a partner notification program shall make the notification of a partner of a person with HIV infection in the manner authorized by this section regardless of whether the person with HIV infection who gave the partner's name consents to the notification; and</p> <p>(2) a health care professional shall notify the partner notification program when the health care professional knows the HIV+ status of a patient and the health care professional has actual knowledge of possible transmission of HIV to a third party. Such notification shall be carried out in the manner authorized in this section and Section 81.103.</p> <p>(h) A health care professional who fails to make the notification required by Subsection (g) is immune from civil or criminal liability for failure to make that notification.</p> <p>(i) A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.</p> <p>(j) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control of the United States Public Health Service for professionals participating in the program.</p> <p>(k) In this section, "HIV" has the meaning assigned by Section 81.101.</p>
§ 81.052	<p>Reports and Analyses Concerning AIDS and HIV Infection</p> <p>(a) The department shall ensure timely and accurate reporting under this chapter of information relating to acquired immune deficiency syndrome and human immunodeficiency virus infection.</p> <p>(b) The department shall</p> <p>(1) quarterly compile the information submitted under Section 81.043(c) and make the compiled data available to the public within six months of the last day of each quarter;</p> <p>(2) annually [routinely] analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, city, county, age, gender, race, ethnicity, national origin, transmission category, and other factors as appropriate; and</p> <p>(3) annually prepare a report on the analysis conducted under Subdivision (2) and make the report available to the public.</p> <p>(b-1) The department may not include any information that would allow the identification of an individual in an analysis conducted under Subsection (b) or in a report prepared under that subsection.</p>

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	<p>(b-2) Not later than January 1, 2009, the department shall prepare and submit to both houses of the legislature a report that:</p> <p>(1) addresses emerging technologies and advancements in AIDS and HIV infection surveillance and epidemiology, including the use of the technologies and advancements to improve the testing for and reporting of AIDS and HIV infection; and</p> <p>(2) makes recommendations regarding this state's use of the emerging technologies and advancements to enhance surveillance, treatment, and prevention of AIDS and HIV infection.</p> <p>(b-3) Subsection (b-2) and this subsection expire September 1, 2009.</p> <p>(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.</p> <p>(d) The department shall make available epidemiologic projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services.</p>
§ 81.090	<p>Diagnostic Testing During Pregnancy and After Birth.</p> <p>(a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:</p> <p>(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at the first examination and visit;</p> <p>(2) submit the sample to an appropriately certified a laboratory for diagnostic testing approved by the United States Food and Drug Administration for:</p> <p>(A) syphilis;</p> <p>(B) HIV infection; and</p> <p>(C) hepatitis B infection; and</p> <p>(3) retain a report of each case for nine months and deliver the report to any successor in the case.</p> <p>(a-1) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:</p> <p>(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at an examination in the third trimester of the pregnancy;</p> <p>(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for HIV infection; and</p> <p>(3) retain a report of each case for nine months and deliver the report to any successor in the case</p> <p>(b) A successor is presumed to have complied with this section if the successor in good faith obtains a record that indicates compliance with Subsections (a) and (a-1), if applicable.</p>

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	<p>(c) A physician or other person in attendance at a delivery shall:</p> <ol style="list-style-type: none"> (1) take or cause to be taken a sample of blood or other appropriate specimen from the mother on admission for delivery; and (2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for: <ol style="list-style-type: none"> (A) syphilis; (B) hepatitis B infection. <p>(c-1) If the physician or other person in attendance at the delivery does not find in the woman's medical records results from the diagnostic test for HIV infection performed under Subsection (a-1), the physician or person shall:</p> <ol style="list-style-type: none"> (1) take or cause to be taken a sample of blood or other appropriate specimen from the mother; (2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for HIV infection; and (3) instruct the laboratory to expedite the processing of the test so that the results are received less than six hours after the time the sample is submitted. <p>(c-2) If the physician or other person in attendance at the time of delivery does not find in the woman's medical records results from a diagnostic test for HIV infection performed under Subsection (a-1), and the diagnostic test for HIV infection was not performed before delivery under Subsection (c-1), the physician or other person in attendance at delivery shall:</p> <ol style="list-style-type: none"> (1) take or cause to be taken a sample of blood or other appropriate specimen from the newborn child less than two hours after the time of birth; (2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for HIV infection; and (3) instruct the laboratory to expedite the processing of the test so that the results are received less than six hours after the time the sample is submitted. <p>(d) Repealed</p> <p>(e) Repealed</p> <p>(f) Repealed</p> <p>(g) Repealed by Acts 1993, 73rd Leg., ch. 30, § 3, eff. Sept. 1, 1993.</p> <p>(h) Repealed</p> <p>(i) Before conducting or causing to be conducted a diagnostic test for</p>

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	<p>HIV infection under this section, the physician or other person shall advise the woman that the result of a test taken under this section is confidential as provided by Subchapter F, but that the test is not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms understandable to a person who may be illiterate if resources permit.</p> <p>(j) The result of a test for HIV infection under Subsection (a)(2)(B), (a-1), (c-1), or (c-2) is a test result for purposes of Subchapter F.</p> <p>(k) Before the sample is taken, the health care provider shall distribute to the patient printed materials about AIDS, HIV, hepatitis B, and syphilis. A health care provider shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the department and shall be prepared and designed to inform the patients about:</p> <ol style="list-style-type: none"> (1) the incidence and mode of transmission of AIDS, HIV, hepatitis B, and syphilis; (2) how being infected with HIV, AIDS, hepatitis B, or syphilis could affect the health of their child; (3) the available cure for syphilis; (4) the available treatment to prevent maternal-infant HIV transmission; and (5) methods to prevent the transmission of the HIV virus, hepatitis B, and syphilis. <p>(l) A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (a)(2)(B), (a-1), or (c-1) if the woman objects. A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (c-2) if a parent, managing conservator, or guardian objects.</p> <p>(m) If a screening test and a confirmatory test conducted under this section show that the woman is or may be infected with HIV, hepatitis B, or syphilis, the physician or other person who submitted the sample for the test shall provide or make available to the woman disease-specific information on the disease diagnosed, including:</p> <ol style="list-style-type: none"> (1) information relating to treatment of HIV infection, acquired immune deficiency syndrome, hepatitis B, or syphilis, which must be in

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	<p>another language, if needed, and must be presented, as necessary, in a manner and in terms understandable to a person who may be illiterate if resources permit; and</p> <p>(2) counseling under Section 81.109, if HIV infection or AIDS is diagnosed.</p> <p>(n) A physician or other person may comply with the requirements of Subsection (m)(1) by referring the woman to an entity that provides treatment for individuals infected with the disease diagnosed.</p> <p>(o) In this section, "HIV" has the meaning assigned by Section 81.101.</p>
§ 81.094	<p>Testing by Hospitals of Persons Indicted for Certain Crimes</p> <p>A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the procedure or test under Article 21.31, Code of Criminal Procedure. The procedure or test is a cost of court.</p>
§ 81.101	<p>Definitions</p> <p>In this subchapter:</p> <p>(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.</p> <p>(2) "HIV" means human immunodeficiency virus.</p> <p>(3) "Bona fide occupational qualification" means a qualification:</p> <p>(A) that is reasonably related to the satisfactory performance of the duties of a job; and</p> <p>(B) for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.</p> <p>(4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Bureau of Biologics of the United States Food and Drug Administration, accredited for membership in the American Association of Blood Banks, or qualified for membership in the American Association of Tissue Banks.</p> <p>(5) "Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain</p>

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	level of antigen or antibody.
§ 81.102	<p>§ 81.102. Tests; Criminal Penalty</p> <p>(a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:</p> <ul style="list-style-type: none"> (1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure; (2) the medical procedure or test is required under Section 81.090, and no objection has been made under Section 81.090(I); (3) the medical procedure or test is authorized under Chapter 545, Insurance Code; (4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to board guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or (5) the medical procedure or test is necessary: <ul style="list-style-type: none"> (A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification; (B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation; (C) in relation to a particular person under this chapter; (D) to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility; (E) to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if: <ul style="list-style-type: none"> (i) the test result would change the medical or social management of the person tested or others who associated with that person; and (ii) the test is conducted in accordance with guidelines adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation and approved by the department; or (F) to test residents and clients of residential facilities of the Texas Youth Commission, but only if: <ul style="list-style-type: none"> (i) the test result would change the medical or social management of the person tested or others who associate with that person; and (ii) the test is conducted in accordance with guidelines adopted by the Texas Youth Commission. <p>(b) An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation.</p> <p>(c) Protocols adopted under Subsection (a)(4)(D) must clearly establish</p>

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	<p>procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.</p> <p>(d) The board may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the board that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:</p> <ul style="list-style-type: none"> (1) the narrowest application of HIV testing necessary for the protection of the public health; (2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions; (3) counseling of persons with seropositive test results; and (4) confidentiality regarding persons tested and their test results. <p>(e) This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders.</p> <p>(f) A person who requires a medical procedure or test in violation of this section commits an offense. An offense under this subsection is a Class A misdemeanor.</p>
§ 81.103	<p>Confidentiality; Criminal Penalty</p> <p>(a) A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.</p> <p>(b) A test result may be released to:</p> <ul style="list-style-type: none"> (1) the department under this chapter; (2) a local health authority if reporting is required under this chapter; (3) the Centers for Disease Control and prevention of the United States Public Health Service if reporting is required by federal law or regulation; (4) the physician or other person authorized by law who ordered the test; (5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare; (6) the person tested or a person legally authorized to consent to the

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	<p>test on the person's behalf;</p> <p>(7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS;</p> <p>(8) a person authorized to receive test results under Article 21.31, Code of Criminal Procedure, concerning a person who is tested as required or authorized under that article;</p> <p>(9) a person exposed to HIV infection as provided by Section 81.050.</p> <p>(10) a county or district court to comply with this chapter or rules relating to the control and treatment of communicable diseases and health conditions.</p> <p>(c) The court shall notify persons receiving test results under Subsection (b)(8) of the requirements of this section.</p> <p>(d) A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this subsection must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.</p> <p>(e) A person may release or disclose a test result for statistical summary purposes only without the written consent of the person tested if information that could identify the person is removed from the report.</p> <p>(f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A report under this subsection is not a breach of any confidential relationship.</p> <p>(g) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A report under this subsection may not disclose the name of the donor or person tested or any information that could result in the disclosure of the donor's or person's name, including an address, social security number, a designated recipient, or replacement information.</p> <p>(h) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.</p> <p>(i) An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results</p>

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	<p>in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential under this chapter.</p> <p>(j) A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this subsection is a Class A misdemeanor.</p> <p>(k) A judge of a county or district court may issue a protective order to take other action to limit disclosure of a test result obtained under this section before that information is entered into evidence or otherwise released in a court proceeding</p>
§ 81.104	<p>Injunction; Civil Liability</p> <p>(a) A person may bring an action to restrain a violation or threatened violation of Section 81.102 or 81.103.</p> <p>(b) A person who violates Section 81.102 or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:</p> <ol style="list-style-type: none"> (1) actual damages; (2) a civil penalty of not more than \$ 5,000; and (3) court costs and reasonable attorney's fees incurred by the person bringing the action. <p>(c) A person who is found in a civil action to have wilfully released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:</p> <ol style="list-style-type: none"> (1) actual damages; (2) a civil penalty of not less than \$ 5,000 nor more than \$ 10,000; and (3) court costs and reasonable attorney's fees incurred by the person bringing the action. <p>(d) Each release or disclosure made, or allowance of a test result to become known, in violation of this subchapter constitutes a separate offense.</p> <p>(e) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action.</p>
§ 81.105	<p>Informed Consent</p> <p>(a) Except as otherwise provided by law, a person may not perform a test designed to identify HIV or its antigen or antibody without first obtaining the informed consent of the person to be tested.</p>

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	(b) Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained.
§ 81.106	<p>General Consent</p> <p>(a) A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign or be presented with a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed on the person during the time in which the general consent form is in effect.</p> <p>(b) Except as otherwise provided by this chapter, the result of a test or procedure to determine HIV infection, antibodies to HIV, or infection with any probable causative agent of AIDS performed under the authorization of a general consent form in accordance with this section may be used only for diagnostic or other purposes directly related to medical treatment.</p>
§ 81.107	<p>Consent to Test for Certain Accidental Exposures</p> <p>(a) In a case of accidental exposure to blood or other body fluids under Section 81.102(a)(4)(D), the health care agency or facility may test a person who may have exposed the health care worker to HIV without the person's specific consent to the test.</p> <p>(b) A test under this section may be done only if:</p> <ol style="list-style-type: none"> (1) the test is done according to protocols established as provided by Section 81.102(c); and (2) those protocols ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result. <p>(c) A test result under this section is subject to the confidentiality provisions of this chapter.</p>
§ 81.108	<p>Testing by Insurers</p> <p>The Insurance Code and any rules adopted by the State Board of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.</p>
§ 81.109	Counseling Required for Positive Test Results

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	<p>(a) A positive test result may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face post-test counseling about:</p> <ol style="list-style-type: none"> (1) the meaning of the test result; (2) the possible need for additional testing; (3) measures to prevent the transmission of HIV; (4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence; (5) the benefits of partner notification; and (6) the availability of partner notification programs. <p>(b) Post-test counseling should:</p> <ol style="list-style-type: none"> (1) increase a person's understanding of HIV infection; (2) explain the potential need for confirmatory testing; (3) explain ways to change behavior conducive to HIV transmission; (4) encourage the person to seek appropriate medical care; and (5) encourage the person to notify persons with whom there has been contact capable of transmitting HIV. <p>(c) Subsection (a) does not apply if:</p> <ol style="list-style-type: none"> (1) a report of a test result is used for statistical or research purposes only and any information that could identify the person is removed from the report; or (2) the test is conducted for the sole purpose of screening blood, blood products, bodily fluids, organs, or tissues to determine suitability for donation. <p>(d) A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover for each violation from a person who violates this section:</p> <ol style="list-style-type: none"> (1) \$ 1,000 or actual damages, whichever is greater; and (2) reasonable attorney fees. <p>(e) This section does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this section.</p> <p>(f) A person performing a test to show HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (d) for failing to provide post-test counseling if the person tested does not appear for the counseling.</p>
§ 85.002	<p>Definitions</p> <p>In this chapter:</p> <ol style="list-style-type: none"> (1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

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	<p>(2) "Communicable disease" has the meaning assigned by Section 81.003 (Communicable Disease Prevention and Control Act).</p> <p>(3) "Contact tracing" means identifying all persons who may have been exposed to an infected person and notifying them that they have been exposed, should be tested, and should seek treatment.</p> <p>(4) "HIV" means human immunodeficiency virus.</p> <p>(5) "State agency" means:</p> <p style="padding-left: 40px;">(A) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the Texas Constitution or a state statute and includes an institution of higher education as defined by Section 61.003, Education Code;</p> <p style="padding-left: 40px;">(B) the legislature or a legislative agency; and</p> <p style="padding-left: 40px;">(C) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.</p> <p>(6) "Testing program" means a medical program to test for AIDS, HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.</p>
§ 85.004	<p>Education Programs</p> <p>(a) The department shall develop model education programs to be available to educate the public about AIDS and HIV infection.</p> <p>(b) As part of the programs, the department shall develop a model educational pamphlet about methods of transmission and prevention of HIV infection, about state laws relating to the transmission, and to conduct that may result in the transmission of HIV.</p> <p>(c) The programs must be scientifically accurate and factually correct and designed to:</p> <p style="padding-left: 40px;">(1) communicate to the public knowledge about methods of transmission and prevention of HIV infection;</p> <p style="padding-left: 40px;">(2) educate the public about transmission risks in social, employment, and educational situations;</p> <p style="padding-left: 40px;">(3) educate health care workers and health facility employees about methods of transmission and prevention in their particular workplace environments; and</p> <p style="padding-left: 40px;">(4) educate the public about state laws relating to the transmission and conduct that may result in the transmission of HIV.</p>
§ 85.081	<p>Model Protocols for Counseling and Testing</p> <p>(a) The department shall develop model protocols for counseling and testing related to HIV infection. The protocols shall be made available to</p>

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	<p>health care providers on request.</p> <p>(b) A testing program shall adopt and comply with the model protocols developed by the department under Subsection (a).</p>
§ 85.082	<p>Department Voluntary Testing Program</p> <p>(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.</p> <p>(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.</p> <p>(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.</p> <p>(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):</p> <ol style="list-style-type: none"> (1) \$1000 or actual damages, whichever is greater; and (2) reasonable attorney fees. <p>(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).</p>
§ 85.083	<p>Registration of Testing Program</p> <p>(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.</p> <p>(b) A hospital licensed under Chapter 241 (Texas Hospital Licensing Law) or a physician licensed under Subtitle B, Title 3, Occupations Code, is not required to be registered under this section unless the hospital or physician advertises or represents to the public that the hospital or physician conducts or specializes in testing programs for AIDS, HIV infection, or related conditions.</p> <p>(c) The department may assess and collect a registration fee in an amount that does not exceed the estimated costs of administering this section.</p> <p>(d) A person who violates Subsection (a) is liable for a civil penalty of \$ 1,000 for each day of a continuing violation.</p>

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§ 85.086	<p>Reports</p> <p>A testing program shall report test results for HIV infection in the manner provided by Chapter 81 (Communicable Disease Prevention and Control Act).</p>
§ 85.087	<p>Training of Counselors</p> <p>(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.</p> <p>(b) The department shall maintain a registry of persons who successfully complete the training course.</p> <p>(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.</p> <p>(d) The board shall set the fee in an amount that is reasonable and necessary to cover the costs of providing the course.</p> <p>(e) The department may contract for the training of counselors.</p>
§ 85.088	<p>State-Funded Health Clinics</p> <p>(a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall:</p> <ol style="list-style-type: none"> (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. <p>(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.</p>
§ 85.111	<p>Education of State Employees</p> <p>(a) Each state agency annually shall provide to each state employee an educational pamphlet about:</p> <ol style="list-style-type: none"> (1) methods of transmission and prevention of HIV infection; (2) state laws relating to the transmission of HIV infection; and

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	<p>(3) conduct that may result in the transmission of HIV infection.</p> <p>(b) The educational pamphlet shall be provided to a newly hired state employee on the first day of employment.</p> <p>(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.</p> <p>(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.</p>
§ 85.115	<p>Confidentiality Guidelines</p> <p>(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.</p> <p>(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.</p> <p>(c) The confidentiality guidelines shall be consistent with guidelines published by the department and with state and federal law and regulations.</p> <p>(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.</p>
§ 85.116	<p>Testing and Counseling for State Employees Exposed to HIV Infection on the Job</p> <p>(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:</p> <ul style="list-style-type: none"> (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. <p>(b) The board by rule shall prescribe the criteria that constitute possible exposure to HIV under this section. The criteria must be based on</p>

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	<p>activities the United States Public Health Service determines pose a risk of HIV infection.</p> <p>(c) For the purpose of qualifying for workers' compensation or any other similar benefits or compensation, an employee who claims a possible work-related exposure to HIV infection must provide the employer with a written statement of the date and circumstances of the exposure and document that, within 10 days after the date of the exposure, the employee had a test result that indicated an absence of HIV infection.</p> <p>(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.</p> <p>(e) Counseling or a test conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.</p> <p>(f) A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested.</p>
§ 85.201	<p>Legislative Findings</p> <p>(a) The legislature finds that:</p> <p>(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;</p> <p>(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;</p> <p>(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</p> <p>(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.</p> <p>(b) Any testing for HIV antibody status shall comply with Subchapters C, D, and F, Chapter 81.</p>

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§ 85.206	<p>Retention of License; Permitted Acts</p> <p>This subchapter does not:</p> <p>(1) require the revocation of the license, registration, or certification of a health care worker who is infected with HIV or hepatitis B virus;</p> <p>(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:</p> <p style="padding-left: 40px;">(A) performing procedures not identified as exposure-prone; or</p> <p style="padding-left: 40px;">(B) providing health care services in emergency situations;</p> <p>(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</p> <p>(4) require the testing of health care workers.</p>
§ 85.253	<p>Prohibitions Relating to Home Testing</p> <p>(a) A person may not market, distribute, or sell a product to be used by a member of the public to test a specimen collected from the human body for HIV infection unless the kit complies with Chapter 431.</p> <p>(b) This section does not apply to a product marketed, distributed, or sold only to physicians or other persons authorized by law to test for HIV infection a specimen collected from the human body.</p> <p>(c) A person may not require an individual to be tested for HIV infection as provided in Section 81.102.</p>
§ 85.254	<p>Package of Services</p> <p>A home collection kit for HIV infection testing shall be sold as part of a package of services that includes:</p> <p style="padding-left: 40px;">(1) laboratory testing by a qualified facility;</p> <p style="padding-left: 40px;">(2) reporting of test results;</p> <p style="padding-left: 40px;">(3) verification of positive test results;</p> <p style="padding-left: 40px;">(4) counseling as required by this subchapter; and</p> <p style="padding-left: 40px;">(5) information, upon request, describing how test results and related information are stored by the service provider, how long the information is retained, and under what circumstances the information may be communicated to other persons.</p>
§ 85.255	<p>Qualified Facility</p> <p>A laboratory facility that conducts testing of a specimen collected with a</p>

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	home collection kit for HIV infection testing must comply with the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a).
§ 85.256	<p>Oral Reporting</p> <p>A service provider shall report test results from a home collection kit for HIV infection testing orally to the individual tested. Notwithstanding Section 81.109, the test results may be provided by telephone.</p>
§ 85.257	<p>Counseling; Counseling Protocols</p> <p>(a) A service provider shall provide pretesting counseling to an individual who is considering using a home collection kit for HIV infection testing. This counseling may be provided orally by telephone or through written information included with the home collection kit.</p> <p>(b) At the time the test results are reported to the individual tested, the service provider shall provide counseling and appropriate referrals for care and treatment.</p> <p>(c) Counseling provided by a service provider, including written information provided under Subsection (a) and referrals, must conform with counseling protocols adopted by the board. Except as provided by Section 85.256, the counseling protocols must be consistent with the requirements of Section 81.109 and the protocols adopted under Section 85.081.</p> <p>(d) Counseling provided by a service provider under this section must be provided in English and in Spanish. The board may require a service provider to provide counseling in another language if the board finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.</p> <p>(e) A service provider, in providing counseling, may not:</p> <ol style="list-style-type: none"> (1) solicit the purchase of additional services or products; or (2) refer the individual being counseled to an entity: <ol style="list-style-type: none"> (A) that is owned or controlled by the service provider; (B) that owns or controls the service provider; (C) that is owned or controlled by an entity that owns or controls the service provider; or (D) that has another ongoing financial relationship with the service provider.
§ 85.258	Labeling

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	<p>(a) A home collection kit for HIV infection testing shall meet the requirements of Chapter 431.</p> <p>(b) In addition to the requirements in Subsection (a), the labeling shall explain which persons and entities will have access to the test results for the individual.</p> <p>(c) In addition to the labeling requirements in Subsections (a) and (b), a home collection kit labeled in Spanish must also be available. The board may require a service provider to label a home collection kit in another language if the board finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.</p>
§ 85.259	<p>Enforcement</p> <p>A home collection kit for HIV infection testing is a "device" as that term is defined in Section 431.002 and is subject to the provisions for enforcement contained in Chapter 431. Any violation of the requirement in Section 85.258 shall be subject to the enforcement provisions of Chapter 431.</p>
§ 85.260	<p>Confidentiality</p> <p>(a) Any statement that an identifiable individual has or has not been tested with a home collection kit for HIV infection testing, including a statement or assertion that the individual is positive, is negative, is at risk, or has or does not have a certain level of antigen or antibody, is confidential as provided by Section 81.103.</p> <p>(b) A person commits an offense if the person violates this section. The punishment for an offense under this section is the same as the punishment for an offense under Section 81.103.</p>
§ 85.261	<p>Certain Technology Prohibited</p> <p>A service provider may not use technology that permits the service provider to identify an individual to whom test results or counseling is provided or to identify the telephone number from which that individual is calling.</p>
§ 85.262	<p>Reports</p> <p>A service provider shall report test results from a home collection kit for HIV infection testing in the manner provided by Subchapter C, Chapter 81.</p>
§ 94.003	<p>Department Voluntary Testing Programs</p>

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	<p>(a) The department shall establish voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under Section 85.082 in each public health region to make confidential counseling and testing available.</p> <p>(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.</p> <p>(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.</p> <p>(d) A person who intentionally violates Subsection (c) is liable to a person injured by the violation. The injured person may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):</p> <ol style="list-style-type: none"> (1) the greater of \$ 1,000 or actual damages; and (2) reasonable attorney's fees. <p>(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).</p>
§ 162.002	<p>Required Testing of Blood</p> <p>(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.</p> <p>(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.</p>
§ 162.004	<p>Disclosure Required by Law</p> <p>A blood bank shall disclose all information required by law, including HIV test results, to:</p> <ol style="list-style-type: none"> (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.

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§ 162.007	<p>Report to Recipient or Transfuser</p> <p>(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:</p> <ol style="list-style-type: none"> (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. <p>(b) A blood bank may report blood test results for statistical purposes.</p> <p>(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.</p>
§ 461.0131	<p>Outreach Programs for Intravenous Drug Users</p> <p>(a) The commission may fund community outreach programs that have direct contact with intravenous drug users.</p> <p>(b) An outreach program funded by the commission must:</p> <ol style="list-style-type: none"> (1) provide education on HIV infection based on the model education program developed by the Texas Department of Health; (2) encourage behavior changes to reduce the possibility of HIV transmission; (3) promote other HIV risk reduction activities; and (4) encourage behavior consistent with state criminal laws. <p>(c) In this section, "HIV" means human immunodeficiency virus.</p>
§ 464.012	<p>HIV Infection Education, Testing, and Counseling [for facilities treating alcoholics and drug dependent persons]</p> <p>(a) A treatment facility licensed under this chapter shall provide to employees of the facility education regarding methods of transmitting and preventing human immunodeficiency virus infection based on the model education program developed by the Texas Department of Health and shall make the education available to facility clients.</p> <p>(b) Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the Texas Department of Health.</p> <p>(c) A treatment facility licensed under this chapter shall make available or make referrals to voluntary, anonymous, and affordable counseling and testing services concerning human immunodeficiency virus infection.</p>

Government Code

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§ 501.054	<p>AIDS and HIV Education; Testing</p> <p>(a) In this section, "AIDS," "HIV," and "test result" have the meanings assigned by Section 81.101, Health and Safety Code.</p> <p>(b) The department, in consultation with the Texas Department of Health, shall establish education programs to educate inmates and employees of the department about AIDS and HIV. In establishing the programs for inmates, the department shall design a program that deals with issues related to AIDS and HIV that are relevant to inmates while confined and a program that deals with issues related to AIDS and HIV that will be relevant to inmates after the inmates are released. The department shall design the programs to take into account relevant cultural and other differences among inmates. The department shall require each inmate in a facility operated by the department to participate in education programs established under this subsection.</p> <p>(c) The department shall require each employee of the department to participate in programs established under this section at least once during each calendar year.</p> <p>(d) The department shall ensure that education programs for employees include information and training relating to infection control procedures. The department shall also ensure that employees have infection control supplies and equipment readily available.</p> <p>(e) The department, in consultation with the Texas Department of Health, shall periodically revise education programs established under this section so that the programs reflect the latest medical information available on AIDS and HIV.</p> <p>(f) The department shall adopt a policy for handling persons with AIDS or HIV infection who are in the custody of the department or under the department's supervision. The policy must be substantially similar to a model policy developed by the Texas Department of Health under Subchapter G, Chapter 85, Health and Safety Code.</p> <p>(g) The department shall maintain the confidentiality of test results of an inmate indicating HIV infection at all times, including after the inmate's discharge, release from a state jail, or release on parole or mandatory supervision. The department may not honor the request of an agency of the state or any person who requests a test result as a condition of housing or supervising the inmate while the inmate is on community supervision or parole or mandatory supervision, unless honoring the request would improve the ability of the inmate to obtain essential health and social services.</p>

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	<p>(h) The department shall report to the legislature not later than January 15 of each odd-numbered year concerning the implementation of this section and the participation of inmates and employees of the department in education programs established under this section.</p> <p>(i) The department may test an inmate confined in a facility operated by the correctional institutions division for human immunodeficiency virus at any time, but must test:</p> <ol style="list-style-type: none"> (1) during the diagnostic process, an inmate for whom the department does not have a record of a positive test result; and (2) an inmate who is eligible for release before the inmate is released from the division. <p>(j) If the department determines that an inmate has a positive test results, the department may segregate the inmate from other inmates. The department shall report the results of a positive test to the Department of State Health Services for the purposes of notification and reporting as described by Sections 81.050-81.052, Health and Safety Code.</p>
§ 507.023	<p>AIDS and HIV Education; Testing</p> <p>(a) The state jail division shall establish and provide education programs to educate state jail division employees and defendants in state jail felony facilities about AIDS and HIV in the same manner as the institutional division establishes and provides programs for employees and inmates under Section 501.054.</p> <p>(b) The state jail division shall adopt a policy for handling a defendant with AIDS or HIV and shall test a defendant for AIDS or HIV in the same manner and subject to the same conditions as apply to the institutional division under Section 501.054.</p> <p>(c) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.</p>

Occupations Code

TX Occupations Code §	Code Language
§ 504.206	<p>Continuing Education Relating to HIV, Hepatitis C, and Sexually Transmitted Diseases</p> <p>(a) The continuing education required under Section 504.205 must include six hours of training during each two-year licensing period relating to HIV, hepatitis C, and sexually transmitted diseases.</p> <p>(b) The commission shall recognize, prepare, or administer a training component that satisfies the requirement of Subsection (a) for use in continuing education for chemical dependency counselors.</p> <p>(c) The training component must address HIV, hepatitis C, and sexually transmitted diseases in the context of chemical dependency counseling and must provide information relating to the special needs of persons with positive test results, including the importance of prevention, early intervention, and treatment and recognition of psychosocial needs. The training component must prepare a chemical dependency counselor to provide appropriate information to educate clients about HIV, hepatitis C, and sexually transmitted diseases.</p> <p>(d) In developing the training component, the commission shall consult with the Texas Department of Health and may, to the extent appropriate, consider the training course relating to hepatitis C developed by the department under Section 93.003, Health and Safety Code, as added by Chapter 823, Acts of the 76th Legislature, Regular Session, 1999.</p>

Texas Administrative Code – Title 25: Health Services, Part 1: Department of State Health Services

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§97.131	<p>Definitions</p> <p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.</p> <p>(1) AIDS and HIV Infection--Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection are as defined by the Centers for Disease Control and Prevention (CDC) and in accordance with the Health and Safety Code, §81.101. The publication designating the most current definition may be requested from: Texas Department of State Health Services, TB/HIV/STD Epidemiology and Surveillance Branch, P.O. Box 149347, Austin, Texas 78714-9347.</p> <p>(2) Confirmatory Test--A second analytical test that is done to detect disease, when an initial or screening test yields a preliminary positive result, which is independent of the initial test and uses a different technique and chemical principle in order to ensure reliability and accuracy.</p> <p>(3) FASTA File--An electronic data format used to store nucleotide sequences of the Human Immunodeficiency Virus (HIV).</p> <p>(4) HIV-Exposed Infant--Any infant born to an HIV-infected woman.</p> <p>(5) Point of Care Tests--Diagnostic tests performed at or near the site of patient care that increase the likelihood of the patient receiving the results as well as referrals for treatment and support services in a timely manner. These tests are usually performed in emergency rooms, outpatient clinics and physician offices.</p> <p>(6) Screening Test--An analytical test used to preliminarily detect the presence of disease. Positive screening test results should be followed by a confirmatory test to verify the presence of that disease.</p> <p>(7) Sexually transmitted disease (STD)--An infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations, and that produces or might produce a disease in, or otherwise impair, the health of either person, or might cause an infection or disease in a fetus in utero or a newborn. Acquired Immune Deficiency Syndrome (AIDS), chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis are sexually transmitted diseases reportable under these rules, and each are as defined by CDC (see http://www.cdc.gov/ncphi/diss/nndss/casedef/case_definitions.htm).</p>
§97.132	Who Shall Report Sexually Transmitted Diseases

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	<p>The following shall report cases of STD and HIV-exposed infants, as detailed in §97.133 of this title (relating to Reporting Information for Sexually Transmitted Diseases):</p> <p>(1) A physician or dentist shall report each patient who has or is suspected of having an STD and/or is an HIV-exposed infant. A physician or dentist may designate an employee of the clinic, including a school based clinic or physician's/dentist's office to serve as the reporting officer. However, it is ultimately the responsibility of the physician or dentist to ensure that the required reporting is submitted.</p> <p>(2) The following persons shall report each person who has or is suspected of having an STD and/or is an HIV-exposed infant, if a report is not made as required by persons specified in paragraphs (1), and (3) - (5) of this section:</p> <p>(A) a professional registered nurse;</p> <p>(B) an administrator or director of a public or private temporary or permanent child-care facility (as defined in Title 40 Texas Administrative Code, Part 19, Chapter 746, Subchapter A, §746.105);</p> <p>(C) an administrator or director of a nursing facility (as defined in Title 40 Texas Administrative Code, Part 1, Chapter 18, Subchapter A, §18.2);</p> <p>(D) an administrator or director of a personal care facility (as defined in Title 40 Texas Administrative Code, Part 19, Chapter 705, Subchapter A, §705.1001);</p> <p>(E) an administrator or director of an adult day-care facility (as defined in Title 40 Texas Administrative Code, Part 1, Chapter 98, Subchapter A, §98.2(3));</p> <p>(F) an administrator or director of a maternity home (as defined in Texas Health and Safety Code, §249.001(3));</p> <p>(G) an administrator or director of an adult respite care center (as defined in Texas Health and Safety Code, §242.181(3));</p> <p>(H) an administrator of a home health agency (as defined in Texas Insurance Code, §1351.001(2));</p> <p>(I) an administrator or health official of a public or private institution of higher education;</p> <p>(J) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;</p>

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	<p>(K) a superintendent, manager, or health official of a public or private camp, home, or institution;</p> <p>(L) a parent, guardian, or householder;</p> <p>(M) a health professional;</p> <p>(N) an administrator or health official of a penal or correctional institution; or</p> <p>(O) emergency medical service personnel, a peace officer, or a firefighter.</p> <p>(3) Any person in charge of a clinical laboratory, hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a blood specimen, or any specimen derived from a human body that yields microscopic, cultural, serological or any other evidence of an STD shall report according to §97.133 of this title (relating to Reporting Information for Sexually Transmitted Diseases).</p> <p>(4) The medical director or other physician responsible for the medical oversight of a testing program, as defined in Texas Health and Safety Code §85.002, shall report each patient who has or is suspected of having an STD and/or is an HIV-exposed infant.</p> <p>(5) A local school authority, as defined at Texas Health and Safety Code, §81.003, shall report a child attending school who is suspected, based on medical evidence, of having an STD and/or is an HIV-exposed infant.</p> <p>(6) Failure to report a reportable disease is a Class B misdemeanor under the Texas Health and Safety Code, §81.049.</p>
§97.133	<p>Reporting Information for Sexually Transmitted Diseases</p> <p>Reporting entities described in §97.132 of this title (relating to Who Shall Report Sexually Transmitted Diseases) shall report all information required by the department for each person who has or is suspected of having an STD and/or is an HIV-exposed infant and for any specimen derived from a human body that yields microscopic, cultural, serological or any other evidence of STD.</p> <p>(1) The department has established the reporting procedures required under Texas Health and Safety Code, §81.044, including the designation of specific forms and methods of reporting. Completed written reports, electronic reports, and telephone reports shall be made in accordance with §97.134 of this title (relating to How to Report Sexually Transmitted Diseases).</p>

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	<p>(2) Physicians and other persons as specified by §97.132(1) - (2), (4), and (5) of this title are required to report.</p> <p>(A) All diagnoses of adult or adolescent HIV infection and AIDS using all of the information found in the most current version of the department's Texas HIV/AIDS Adult/Adolescent case report form (available as specified in §97.134 of this title - relating to How to Report Sexually Transmitted Diseases) and all diagnoses of pediatric HIV infection and AIDS using all of the information from the most current version of the department's Texas HIV/AIDS pediatric case report form (available as specified in §97.134 of this title).</p> <p>(B) Information on all HIV positive women giving birth and HIV-exposed infants using all of the elements from the most current version of the department's Enhanced Perinatal HIV Surveillance form adopted by the department (available as specified in §97.134 of this title).</p> <p>(C) All chancroid, Chlamydia trachomatis, gonorrhea, and syphilis infections using all of the information found in the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27) for adults and adolescents (available as specified in §97.134 of this title).</p> <p>(D) All congenital syphilis infections using all of the information found in the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27).</p> <p>(E) Positive or reactive results from point of care testing for STDs (including HIV) for adults, adolescents and HIV-exposed infants using all of the information found in the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27).</p> <p>(3) Any person in charge of a laboratory or other facility as specified by §97.132(3) of this title is required to report the results for each person who has or is suspected of having an STD and/or is an HIV-exposed infant by providing all of the information sought in the most current version of the department's Notification of Laboratory Test Findings Indicating Presence of Chlamydia trachomatis, Gonorrhea, Syphilis, Chancroid, HIV Infections or CD4 Counts form (STD-28) (available as specified in §97.134 of this title), including the following:</p> <p>(A) All positive or reactive STD test results, including screening tests, all HIV viral loads (detectable and non-detectable), and all CD4+T-lymphocyte cell counts and percentages for adults and adolescents over 12 years of age.</p> <p>(B) HIV DNA or RNA virologic tests on all infants from birth to three years of age, regardless of the test findings (e.g., negative or positive).</p>

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	<p>(C) All confirmatory tests for syphilis, regardless of result (e.g., reactive or non-reactive).</p> <p>(D) HIV drug resistance testing that contains the resulting nucleotide sequences of the HIV (e.g., FASTA file).</p> <p>§97.134. How to Report Sexually</p>
§97.134	<p>How to Report Sexually Transmitted Diseases</p> <p>(a) All case reports received by the health authority or the department are confidential as provided by law.</p> <p>(b) Reporting forms and/or information from all entities required to report should be sent to the local health department director where the physician's office, hospital, laboratory or medical facility is located or, if there is no such facility, the reports should be forwarded to the regional director in the region where the physician's office, hospital, laboratory, or medical facility is located.</p> <p>(c) If any individual or entity is unsure where to report any of the diseases mentioned in this subchapter, the reports shall be placed in a sealed envelope addressed as follows: Texas Department of State Health Services, TB/HIV/STD Epidemiology and Surveillance Branch, MC 1873, P.O. Box 149347, Austin, Texas 78714-9347 and the envelope shall be marked "Confidential." The envelope shall be delivered with the seal unbroken to the TB/HIV/STD Epidemiology and Surveillance Branch office for opening and processing of the contents. Additional reporting information can be obtained from the HIV/STD Program website at http://www.dshs.state.tx.us/hivstd/default.shtm.</p> <p>(d) Reports of STD and/or HIV-exposed infants shall contain all of the information found on the reporting forms specified in §97.133(2) of this title (relating to Reporting Information for Sexually Transmitted Diseases). Forms can be obtained from local health departments and department health service regions; forms shall be provided without charge to individuals required to report. As list of local health departments and department health service region offices that can provide reporting forms is available at http://www.dshs.state.tx.us/hivstd/healthcare/reporting/shtm. Information required on the reporting form shall include (but is not limited to) the following:</p> <p>(1) the patient's name, address, age, sex, race, and occupation; the date of onset of the disease or condition; the probable source of infection and the name of the attending physician or dentist; and</p> <p>(2) reports of HIV infection or AIDS shall also contain the patient's ethnicity, national origin, and city and county of residence.</p>

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	<p>(e) Physicians and other persons as specified by §97.132(1) - (2), (4), and (5) of this title must submit reports of primary or secondary syphilis by telephone within one working day of determining the diagnosis. All other reports of STD including AIDS and HIV from physicians and other persons as specified by §97.132 of this title must be submitted within seven calendar days of the determination of the existence of a reportable condition.</p> <p>(f) Any person in charge of a clinical laboratory or other entity as specified by §97.132(3) of this title shall submit syphilis test results within three working days of obtaining the test result and shall submit all other test results within seven calendar days. In addition to required reporting, if, during any calendar quarter, tests for chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection and syphilis are performed and all test results are negative, the person in charge of reporting for the laboratory shall submit a statement to this effect on or before January 5, April 5, July 5, and October 5 following that calendar quarter.</p> <p>(g) A health authority shall report each week to the department all cases reported to the authority during the previous week of STD, including HIV infection and AIDS, using electronic or paper reports. Information on how to submit electronic reports can be obtained from the TB/HIV/STD Epidemiology and Surveillance Branch through an email request to HIVSTDreporting@dshs.state.tx.us. Paper reports should be mailed to the Texas Department of State Health Services, TB/HIV/STD Epidemiology and Surveillance Branch, MC 1873, P.O. Box 149347, Austin, TX, 78714-9347.</p> <p>(h) A local health department director or regional director shall forward to the department at least weekly all reports of cases received by him/her. Transmittal may be by mail, courier or electronic transmission.</p> <p>(i) If reporting by electronic transmission, including facsimile transmission by telephone, the same degree of protection of the information against unauthorized disclosure shall be provided as those of reporting by mail or courier transmittal. The department shall, before authorizing such transmittal, establish guidelines for establishing and conducting such transmission.</p>
§97.135	<p>Serological Testing during Pregnancy and Delivery</p> <p>(a) A pregnant woman shall be serologically tested for syphilis, HIV infection, and hepatitis B infection, once during gestation and again upon admittance for delivery.</p> <p>(1) At the time of the first prenatal examination and visit, every physician or other person permitted by law to attend a pregnant woman during gestation shall:</p> <p>(A) distribute to the woman printed materials about syphilis, HIV,</p>

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	<p>AIDS, and hepatitis B and their affects on pregnancy, provided by the Department of State Health Services and note on the woman's medical chart or health care record that the distribution of materials were made;</p> <p>(B) verbally notify the woman that an HIV test will be performed if the patient does not object and note on the medical records that verbal notification was given:</p> <p>(i) advise the woman that the result of the HIV test taken under this action is confidential, not anonymous, and explain the difference between an anonymous and confidential HIV test; and</p> <p>(ii) if the woman objects to the test for HIV infection, the physician or other person may not conduct the test. The physician or other person shall refer the woman to an anonymous HIV testing site or instruct the woman about anonymous HIV testing methods.</p> <p>(C) take or cause to be taken a sample of the blood of the woman and submit such sample to a laboratory certified by the Clinical Laboratory Improvement Amendments of 1988 (CLIA-88; 42 United States Code §263a), for:</p> <p>(i) a standard serological test for syphilis;</p> <p>(ii) a standard serological test for HIV infection unless the woman objects to the test; and</p> <p>(iii) a standard serological test for hepatitis B infection;</p> <p>(D) persons listed in paragraph (1) of this subsection must keep records of each case for nine months, and must deliver a copy of the report to any subsequent person attending the pregnant woman.</p> <p>(2) When a pregnant woman is admitted for delivery, the physician or other person permitted by law to attend a pregnant woman shall:</p> <p>(A) distribute to the woman printed material provided by the Department of State Health Services, regarding information about syphilis, HIV, AIDS, and hepatitis B, and note on the woman's medical chart or health care record that the distribution of material was made;</p> <p>(B) verbally notify the woman that an HIV test will be performed if she does not object and note on the medical records that verbal notification was given:</p> <p>(i) advise the woman that the result of the HIV test taken under this section is confidential, not anonymous, and explain the difference between an anonymous and confidential HIV test; and</p> <p>(ii) if the woman objects to the test for HIV infection, the physician or other person may not conduct the test. The physician or other person shall refer the woman who objects to the test to an anonymous HIV testing site or instruct the woman about anonymous HIV testing methods.</p> <p>(C) take or cause to be taken a sample of the blood of the woman and submit such sample to a laboratory certified by the Clinical Laboratory Improvement Amendments of 1988 (CLIA-88; 42 United States Code §263a), for:</p> <p>(i) a standard serological test for syphilis;</p> <p>(ii) a standard or rapid serological test for HIV infection unless the woman objects to the test; and</p> <p>(iii) a standard serological test for hepatitis B infection.</p>

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	<p>(3) Every physician or other person required to report births or fetal deaths shall state on each birth or fetal death certificate whether a blood test for syphilis was performed during the pregnancy.</p> <p>(4) If a test for syphilis, HIV, or hepatitis B conducted under this section shows that the woman is or may be infected with syphilis, HIV, or hepatitis B, the physician or other person who submitted the sample for the test shall make test results available in a timely manner to allow appropriate medical intervention, and:</p> <p>(A) provide or make available to the woman information relating to the specific disease and its treatment, presented such that the patient can understand its contents, or</p> <p>(B) refer the woman to an entity that provides treatment for individuals infected with the diagnosed disease.</p> <p>(5) provide or make available to the HIV or AIDS-infected woman counseling which complies with Texas Health and Safety Code, §81.109.</p> <p>(b) a diagnosis of syphilis, HIV infection, AIDS, or hepatitis B shall be reported in accordance with §§97.2 - 97.5 of this title (relating to Control of Communicable Diseases).</p>
§97.137	<p>Exposure of Health-Care Personnel to Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Infection</p> <p>(a) Health-care personnel are at risk of exposure to HIV or AIDS if the personnel are in contact with blood or other body fluids (amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions) or any body fluid visibly contaminated with blood through percutaneous inoculation or contact with an open wound, nonintact skin or mucous membrane during the performance of normal job duties.</p> <p>(b) Health-care personnel are at risk of exposure to HIV or AIDS during a medical procedure if the personnel have their mucous membranes or skin in contact with any body fluid or tissue (other than patient's intact skin) and 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 procedures.</p> <p>(c) Health-care personnel should follow the most current exposure and risk guidance provided by the federal Centers for Disease Control and Prevention.</p> <p>(d) Publications related to the prevention of HIV or AIDS are available upon request from: HIV/STD Comprehensive Services Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199.</p> <p>(e) Texas Health and Safety Code, §§85.201 - 85.203 contain requirements and information for health care personnel regarding</p>

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	infection control standards and related issues under this section. Also, see §96.202 of this title (relating to Exposure Control Plan).
§97.138	<p>Guidelines for Testing Certain Indicted Persons for Certain Diseases</p> <p>(a) The Texas Code of Criminal Procedure, Article 21.31(a), describes medical tests that a judge may order a person to undergo when that person is indicted for, or waives indictment for, a listed offense as described in Texas Code of Criminal Procedure, Article 21.31(a). Under that statutory language tests may be ordered for any of the following, under the described conditions: a sexually transmitted disease; acquired immune deficiency syndrome (AIDS); human immunodeficiency virus (HIV) infection; hepatitis A or B; tuberculosis; and/or any other disease designated as a reportable disease under Texas Health and Safety Code, §81.048. The court may direct the person to undergo the procedure or test on its own motion or on a motion filed pursuant to a request by the victim of the alleged offense. Subsequent tests may also be ordered, as provided by law. Procedures and requirements are outlined at Texas Code of Criminal Procedure, Article 21.31(a). The Texas Code of Criminal Procedure, Article 21.31(b), describes court-ordered testing regarding a person charged with an offense under Texas Penal Code, §22.11.</p> <p>(b) A hospital shall perform the medical procedure or test on a person if a court so orders, as required in Texas Health and Safety Code, §81.094. All aspects of testing, whether performed in a hospital or not, under this section must be conducted in accordance with CDC Sexually Transmitted Diseases Treatment Guidelines and with other applicable CDC and department testing guidelines and in accordance with state and federal confidentiality requirements (note that Texas Code of Criminal Procedure, Article 21.31, allows certain specific disclosures).</p> <p>(c) The person performing the procedure or test under subsection (a) of this section shall timely submit the test results to the local health authority, following which that local health authority must timely notify the victim of the alleged offense, and the person charged with the offense, of the test result.</p>
§97.140	<p>Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job</p> <p>(a) Purpose. The purpose of this section is to implement the provisions of the Communicable Disease Prevention and Control Act, Texas Health and Safety Code, §85.116, which requires the Texas Department of Health (department) to adopt rules to implement the Act.</p> <p>(b) Counseling and testing.</p> <p>(1) The counseling for state employees exposed to HIV on the job should be performed in accordance with the most current guidelines developed by the department. Copies are available for review in the HIV/STD Comprehensive Services Branch, Department of State Health</p>

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	<p>Services,,1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available on request.</p> <p>(2) A state employee who may have been exposed to HIV while engaged in activities within the course and scope of state employment may not be required to be tested for HIV.</p> <p>(3) HIV counseling and testing will be performed on a state employee, when requested by the employee, at the expense of the state agency if:</p> <p>(A) the employee documents to the agency's satisfaction that he or she may have been exposed to HIV while engaged in activities within the course and scope of state employment; and</p> <p>(B) the exposure was 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 known to transmit HIV.</p> <p>(c) Workers' compensation. To qualify for workers' compensation or similar benefits or compensation, the employee must provide the state agency with a written statement of the date and circumstances of the exposure and document that, within ten days after the date of the exposure, the employee had a test result that indicated the absence of HIV infection. Further information can be obtained from "Risk Management for Texas State Agencies, Volume III, Workers' Compensation Exposures," which is available from the State Office of Risk Management, P. O. Box 13777, Austin, Texas 78711-3777.</p>
§97.141	<p>Fee to Cover the Cost of Providing the Human Immunodeficiency Virus (HIV) and Hepatitis C Protocol-Based Counseling Testing Course</p> <p>(a) Purpose. The purpose of this section is to implement the provisions of the Health and Safety Code, §85.087 and §93.003, requiring the Department of State Health Services (department) to develop and offer a training course for persons providing HIV and/or hepatitis C counseling, and authorizes the department to charge a fee for the course.</p> <p>(b) Content. The training course shall include information relating to risk reduction and the special needs of persons with positive test results for the diseases. General information on these diseases is sent to participants prior to the actual course.</p> <p>(c) Fee.</p> <p>(1) The fee will be \$300 for each participant, except that no fee is required from employees of an entity that receives state or federal funds for HIV or Hepatitis C counseling and testing through a current contract with the department. The HIV/STD Comprehensive Services Branch may waive the fee, at its sole discretion, according to its written internal procedures regarding compelling public health need.</p> <p>(2) Fees shall be made payable to the Department of State Health</p>

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	<p>Services. All fees are non-refundable and must be received by the department prior to participation in the course. The accepted forms of payment are cashiers check or money order. No other form of payment will be accepted.</p> <p>(d) Notice. Notice of the training courses will be announced through on-line training calendar located at http://www.dshs.state.tx.us/hivstd/training/schedule.shtm.</p>
§97.145	<p>Anonymous and Confidential HIV Testing</p> <p>(a) State-funded primary health, women's reproductive health, and sexually transmitted disease clinics shall provide voluntary and affordable counseling and testing programs for HIV infection, or provide referrals to such programs. These entities shall offer both anonymous and confidential testing for HIV infection or provide referrals for anonymous and confidential testing.</p> <p>(b) All HIV testing sites funded by the Department of State Health Services shall offer confidential and anonymous HIV testing on site.</p>
§97.146	<p>Confidentiality of HIV/STD Test Results</p> <p>A test result under this subchapter is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by Health and Safety Code, §81.103 and other applicable state and federal law. Under Texas Health and Safety Code §81.103(j), a person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this section is a Class A misdemeanor.</p>