

DIVISION CIRCULAR #45

DEPARTMENT OF HUMAN SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES

EFFECTIVE DATE: May 1, 2000

DATE ISSUED: April 5, 2000
(Rescinds Division Circular #45, issued July 24, 1995)

I. **TITLE:** HIV/AIDS

II. **PURPOSE:** To develop policies and procedures, and provide guidelines for the prevention and management of HIV exposure and infection incidents of employees and individuals served by the Division. This circular also addresses issues surrounding confidentiality.

This circular was developed in conjunction with the DHS Administrative order 2:08.

III. **SCOPE:** This circular applies to all components of the Division as well as agencies under contract with or regulated by the Division.

NOTE: Some sections of this circular will not apply to provider agencies.

IV. **POLICIES:**

... The Division recognizes the seriousness of the disease caused by the human immunodeficiency virus (HIV) and its impact on health and social services provided by the Department.

... The Division and its employees shall serve any and all citizens of New Jersey, who, by statute or regulation, are eligible for services, including

those with a suspected or confirmed diagnosis of HIV infection with or without AIDS symptoms.

... The Division shall not discriminate in any manner in hiring and job assignment practices against known HIV exposed or HIV infected employees.

... Admission to a developmental center or a Division operated or funded program shall not be cause for testing for the presence of HIV.

... HIV testing of individuals receiving services and all results will be kept in strictest confidence and will not be made available to any party without written consent, as provided in this circular.

... Employees and agencies under contract with or regulated by the Division have a duty to maintain the confidentiality of HIV-related information. The duty to maintain the confidentiality derives from an individual's right to privacy which is established by the U.S. Constitution; the New Jersey State Constitution; the New Jersey Law Against Discrimination; other New Jersey State statutes and regulations; and, common law doctrine.

... Individuals receiving services, their families, guardians and partners have a right to privacy concerning disclosure of information related to HIV infections. The right to decide to whom information may be disclosed rests with the individual about whom the information pertains, or guardian, and not with employees or provider agencies.

... Unauthorized disclosure of HIV-related information could lead to individual liability as well as lawsuits against the Department, Division or provider agencies.

... Disclosure of HIV-related information could result in the individual suffering loss of privacy, harassment and discrimination.

V. GENERAL STANDARDS:

A. Definitions – For the purpose of this circular, the following terms shall have the meaning defined herein.

AIDS (acquired immunodeficiency syndrome) means a group of symptoms and disorders in the advanced stages of human immunodeficiency virus (HIV) infection which impairs the body's

ability to fight infection and leaves a person vulnerable to opportunistic infections, i.e., infections that take advantage of the body's inability to resist disease.

Accidental Exposure means an incident in which an open wound, skin lesion, or the mucous membrane of an individual accidentally comes in contact with blood or other body discharges from another

person, or where the individual is stuck by a needle or other sharp instrument previously used on another person.

Asymptomatic Carrier means a person infected with HIV and therefore capable of transmitting the disease but who has no symptoms.

Casual Contact means close, but nonsexual interaction, such as handshakes, hugging or kissing; sharing towels, eating or drinking utensils; and exposure to sneezing or coughing.

HIV (human immunodeficiency virus) means a virus, transmitted through blood, semen, vaginal secretions, or breast milk of infected persons, that destroys the cells which make up the body's immune system causing the body to be unable to defend itself from "opportunistic" infections.

HIV Related Information means any information that is likely to identify, directly or indirectly, someone as having been tested for or actually having HIV infection, antibodies to HIV, AIDS, or related infections or illness, or someone suspected of having HIV as a result of high risk behaviors.

Opportunistic Infection means an illness that occurs only when someone's immune system isn't working normally. The disease agent takes advantage of the body's weakened state.

B. Conditions of Testing – Served Individuals

1. All persons admitted to developmental centers will be screened by admission personnel within 30 calendar days to ascertain whether they fall into a high-risk category or have engaged in high-risk behaviors. These high-risk factors include:

.. IV drug users and sexual partners of IV drug users;

- .. persons having multiple sexual partners;
 - .. homosexual or bisexual men or their sexual partners;
 - .. prostitutes or those having sexual contact with prostitutes;

 - .. hemophiliacs; and

 - .. individuals who have received blood product transfusions, particularly between 1978 and 1985.
2. When clinically or socially indicated, or at the request of the individual or legal guardian, the Division will offer voluntary testing, agreed to in writing, by the competent adult or his/her legal guardian, for the presence of HIV with concurrent and appropriate counseling, education follow-up services and treatment per current accepted protocol.
 3. Before a test for HIV is performed, written informed consent for the test will be obtained from a competent individual, parent or a minor or legal guardian of a legally incompetent adult. If the individual appears incompetent to give written consent, but has not been legally declared incompetent, the proper guardianship procedures must be completed before the test can be given.
 4. A physician's or dentist's decision to recommend HIV testing must be based on the medical and/or social history of the individual, the physical examination, the presenting symptomology, the individual's lifestyle, and/or the overt current behavior of the individual. If the individual reveals through express information or discernible behaviors that he/she is in a high-risk category as defined in (1) above, and the individual or legal guardian gives written informed consent, HIV counseling and testing may be ordered.
 5. If an individual receiving services or employee has been accidentally exposed, HIV counseling and testing shall be recommended to the individual. The source of the accidental exposure shall be offered the opportunity for HIV counseling and testing. The source shall be asked to give consent to release information to the person exposed.

6. In developmental centers, the laboratory supervisor will be given a copy of the signed informed consent form **before** performing an HIV test on any individual.

C. Confidentiality

1. Existing laws re: HIV require a greater degree of confidentiality than is provided to the client record in N.J.S.A. 30:4-24.3.
2. HIV related information filed in the client record shall be protected per the requirements of N.J.A.C. 10:41-2.
3. HIV related information shall be maintained in a secured area. Access to that record shall be limited to persons with a need to know in order to provide HIV related services.
4. Written records or computer files that are generally available to staff must not be labeled or segregated in a manner that could lead to its identification as containing HIV-related information.
5. For community agencies, HIV related information shall be maintained by the agency's Executive Director or designee. Also, if a person is not served by a provider, the information shall be maintained by the Regional Administrator.
6. Information Covered by Confidentiality
 - a. HIV-related information pertaining to a specific individual who has applied for, receives, or formerly received services from the Division;
 - b. HIV-related information pertaining to an individual's family, guardian or partner;
 - c. HIV-related information regardless of the source, including whether the information is obtained intentionally; from the individual receiving services, his/her family, guardian, partner, or another source; or

through oral, observed written or electronic communication.

7. Individuals Subject to the Confidentiality Policy and Penalties for Unauthorized Disclosures

- a. All individuals who work for or provide services are bound by the confidentiality provisions of this circular, including, but not limited to: full and part-time employees, provider agencies, independent contractors, consultants, licensees, hourly employees, interns, volunteers and board members.
- b. All individuals as declared in 7a. above are required to review this circular, understand the requirements and agree to follow the procedures.
- c. Under federal and State law, the Division and individuals listed above are subject to civil and/or criminal liability, including fines or imprisonment, for breaches of confidentiality of HIV-related information.
- d. Violations by Division employees of any of the procedures required by this policy will be reviewed for further action and may be considered grounds for disciplinary or other actions. Sanctions may include reprimand, prohibition from further access to HIV-related information or termination of employment pursuant to DHS Administrative Order 4:08.

8. Competency and Informed Consent for Disclosure of HIV-Related Information

- a. A competent individual or the legal guardian of a minor or incompetent adult, must give specific written informed consent for disclosure of HIV-related information. The only exceptions are listed in section 9b.
- b. If the HIV-related information concerns a family member, guardian or partner, then that individual

must give specific written informed consent to any disclosure.

- c. Written consent shall include:
 - .. the purpose of the disclosure;

 - .. a precise description of the information the Division or agency is authorized to disclose;

 - .. the individual or agency to receive the HIV-related information;

 - .. the time period during which the consent is effective; and,

 - .. the individual's or guardian's right to revoke consent.
- d. Adults with developmental disabilities are presumed to be legally competent to give or deny consent to disclosure of HIV-related information unless they have been adjudicated incompetent to make this type of health care decision. If a guardian has been appointed to make such health care decisions, specific written informed consent must be obtained from that individual.
- e. Consent shall be obtained from the parent, guardian or other individual authorized under State law to act in a minor's behalf when consent is required for disclosure of the record of a minor who has or is suspected of having HIV infection. If a minor is 12 years of age or older, understands the diagnosis, and a parent or guardian is unavailable, the minor can consent to the release of this information. (N.J.S.A. 26:5C-13).
- f. When there are clear indications that a competent adult or minor lacks the mental capacity to understand and appreciate the information being presented, and if

a medical emergency exists that requires disclosure of HIV-related information in order to protect the individual's health from imminent harm, consent is not required. (See 9b)

- i. In the case of an adult, if there is no medical emergency, the Division will follow standard procedures mandated in the applicable guardianship laws.
 - ii. In the case of a minor, if there is no medical emergency, unless the minor's consent rights derive from a judicial order of emancipation, the parent, legal guardian, or agency that has been given legal custody may consent to disclosure. Where seeking parental consent would be inadvisable, as when the parent cannot be found or has demonstrated disinterest in the child's well being, the Division may petition the court for authority to consent to disclosure.
 - g. When the individual is legally incompetent to give consent to disclosure of HIV-related information, staff should still explain to the individual, to the extent that he/she can understand, the purpose of the proposed disclosure and ascertain the individual's preference.
 - h. Individuals receiving services have the right to disclose HIV-related information about themselves to anyone they choose, including other individuals receiving services, however, because of emotional or cognitive impairments, or age, they may not understand or appreciate the potential consequences of disclosure. Therefore, staff members should counsel individuals about the potential risks of disclosure and the risks of non-disclosure.
9. Disclosure of HIV-Related Information Without Consent

- a. Except as noted in 9b below, all individuals covered by this circular cannot gain access to HIV-related information, nor disclose this information to anyone else within the agency, unless the individual, or his/her legal guardian has authorized access/disclosure through specific written consent. This also applies to the individual's family, guardian or partner.

- b. Per N.J.S.A. 26:5c-1 et seq., specific written consent is not required, but is encouraged, in situations in which the individual with whom information is to be shared needs to know this information in order to:
 - i. plan or provide HIV diagnosis and treatment (including HIV-related counseling and mental health care) and HIV-related services to the individual;
 - ii. provide referral for HIV-related diagnosis, treatment, or services to the individual;
 - iii. carry out essential administrative or reimbursement functions relating to the provision of HIV-related diagnosis, treatment, or services to the individual; and,
 - iv. provide emergency medical treatment necessary to protect the individual's health from imminent harm when the individual is not capable of providing consent, and the urgency of providing treatment precludes getting consent from the legal guardian.

- c. Individuals or their legal guardian, will be asked to give specific, written consent for access to or written disclosure of HIV-related information in accordance with 9a, when they apply for or receive treatment, services or benefits. To the extent feasible, the CEO/Medical Director will identify, for the individual, staff who will have access to their HIV-related information.

- d. An individual's specific, written consent is not required in order to conduct internal Division-approved research or evaluations, so long as release of HIV-related information is authorized and is consistent with applicable federal and State laws, and the information to be disclosed does not identify, directly or indirectly, a specific individual.

- e. All written disclosure of HIV-related information will be accompanied by a written statement prohibiting the agency or person from redisclosing this information to anyone else without the individual's consent. All oral disclosures of HIV-related information will be accompanied by an oral warning against redisclosure.

- f. All written disclosures shall be documented together with the HIV-related material and include the following information:
 - i. the date of disclosure;
 - ii. contents of the disclosure;
 - iii. recipient of the disclosure;
 - iv. reasons for disclosure;
 - v. type of authorization (i.e., whether the competent individual or legal guardian gave written consent for the specific disclosure or the disclosure was statutorily mandated); and
 - vi. an indication the individual to whom the information was released was notified against redisclosing the information to another. A competent individual or legal guardian signed consent form authorizing disclosure must be included in the HIV file.

- g. Individuals receiving services or their legal guardians shall be informed of all disclosures made pursuant to a medical or mandatory disclosure provision.

D. Reporting Requirements

1. Cases of HIV infection or AIDS diagnosed by a developmental center of the Division shall be reported to the State Department of Health in accordance with the requirements of N.J.A.C. 8:57-2.2 (a and b) and 2.3 (a and b) and without identifiers for statistical purposes to:
 - a. The Division Director;
 - b. The Commissioner of Human Services.
2. For persons in community placement, the responsibility to report shall rest with the attending physician.

E. Clinical Procedures

All components of the Division and agencies under contract with or regulated by the Division will follow the New Jersey Department of Health and the Centers for Disease Control recommendations on the practices of universal precautions in situations involving handling blood and body fluids.

All components of the Division will follow the requirements of the Occupational Exposure to Bloodborne Pathogens Standard (29 CFR Part 1910). Agencies under contract with or regulated by the Division shall follow OSHA regulations as appropriate.

F. HIV Management – Division Employees

The New Jersey Law Against Discrimination (LAD) prohibits employment discrimination based on physical or mental handicap or a perception of handicap. Any person infected with HIV is considered “handicapped” under the LAD. Employees with identified HIV-related medical conditions which impair their health and ability to perform safely and effectively should be handled in a manner consistent with other serious life-threatening illnesses and the Department of Human Services Personnel policies.

Scientific and epidemiological evidence reports that the kind of casual contact that generally occurs among workers in the

workplace poses minimal risk of transmission of HIV. All employees are encouraged to know their HIV status.

1. Employees Ability to Work

- a. All HIV infected employees should, if they choose, continue to work to the fullest degree possible as long as they are physically and mentally able to perform their job. The relevant standard is job performance,

which should be applied fairly and consistently to all employees.

- b. if it becomes necessary to modify job assignments because of increasing disability, reasonable accommodations should be undertaken. These accommodations might include more flexible hours, reduction in workload, or other adjustments that do not require a fundamental restructuring of the work place or excessive costs.

2. Privacy and Confidentiality

- a. Employers have a duty to protect the confidentiality of employee's medical information. Any medical documentation relating to an employee's HIV status will be considered to be confidential.
- b. Medical records may not be disclosed without the consent of the employee, by order of a court, or where disclosure is mandated by law.
- c. Supervisors, managers and other employees involved in making and implementing personnel management decisions involving employees who reveal medical information about themselves or who have HIV related conditions which are observed during a physical examination, must strictly observe applicable privacy and confidentiality requirements.
- d. HIV-related information shall be kept separate from the employee file.

3. Leave Administration – Requests for leave shall be handled in a manner consistent with any request for leave which arises from any medical disability.

4. Employee Conduct

a. In situations where employees express reluctance or refusal to work with HIV infected individuals or employees, management shall deal with these

problems through appropriate counseling and education.

b. If the component is unable to deal effectively with such situations through education/counseling and/or the employee's behavior threatens the safety, order or direction of the work of the facility, the employee is subject to corrective/disciplinary action in accordance with Supplement 1 of DHS Administrative Order 4:08.

F. Personnel Training and Education

The Division, recognizing that education is one of the most effective means of preventing the spread of HIV and of dispelling fears associated with the disease, shall make available to its employees current, accurate and objective information concerning HIV.

1. Training and Education

a. Division employees shall attend "HIV Awareness" training, in accordance with the provisions of Executive Order No. 199. New employees shall receive "HIV Awareness" training during new employee orientation, or within 30 calendar days after being hired.

b. More comprehensive, advanced and/or specialized training and education in such areas as infection control shall be provided for those employees whose job responsibilities may warrant such training or who may be determined to be at an increased risk of exposure.

- c. Retraining and additional training shall be provided if a change in job responsibilities or work assignment is determined to increase an employee's risk of exposure or when a change in the state of knowledge of HIV necessitates such training.

Deborah Trub Wehrlen
Director