*Executive Office of Health and Human Services*

*Department of Developmental Services*

**POLICY TITLE: HIV and AIDS Policy and Procedures**

**DDS POLICY #: 99-8**

**DATE ISSUED: 2/22/99**

**EFFECTIVE DATE: 2/22/99**

**COMMISSIONER’S SIGNATURE: Commissioner**

**I. PURPOSE AND SCOPE**

A) It is the policy of the Department of Mental Retardation that any individual
who seeks DMR operated, licensed, or funded supports and/or who receives such supports will not be subject to discrimination on the basis of infection with Human Immunodeficiency Virus (HIV) status.

Persons who test positive for HIV or have been diagnosed as having AIDS will be considered to be handicapped under Section 504 of the Rehabilitation Act and under the provisions of the Americans with Disabilities Act.

B) This policy revises and replaces DMR Policy 93-1. It applies to all supports
which are operated, licensed, or funded by the Department of Mental Retardation.

**II. HIV TRANSMISSION**

A) The Federal Centers for Disease Control has determined that HIV is transmitted through unprotected sexual intercourse with an infected person; through infected blood, blood products, and donated organs, or infected semen; from an infected mother to her fetus or infant during pregnancy or delivery, or when breast feeding.

B) HIV is not transmitted through casual contact such as sitting near or living in the same household with an individual with HIV infection.

**III. EDUCATION/TRAINING PROGRAMS FOR STAFF**

In-service education programs on Universal Precautions, including HIV, are mandated for all Department of Mental Retardation and provider staff, and will utilize the curriculum and materials developed by the Training Sub-Committee of the AIDS Task Force. Materials will be made available to staff and will be updated, as necessary, to reflect current clinical practice. HIV trainers have been designated in all DMR regional offices and staff should seek consultation from trainers in addressing HIV related training issues.

**IV. EDUCATION/TRAINING PROGRAMS FOR INDIVIDUALS WITH MENTAL RETARDATION**

Individuals with mental retardation must be provided age appropriate and functionally appropriate education/training to enable them to understand, to the greatest extent possible, those measures necessary to prevent HIV transmission. Education and training programs must be specific to individual needs, as identified through the ISP, and should be integrated into other training programs related to health, human sexuality, responsible behavior, relationship development, self-actualization, vocational skills, universal precautions, and exposure reporting. As indicated by the needs of individuals, HIV education/training may include: risk reduction activities, signs and symptoms of HIV infection, sexually transmitted diseases, and information about the dangers of substance abuse, in terms of both direct transmission of HIV and the indirect effect of impaired judgment.

Education and support will be provided to promote access to necessary methods of protection and/or medical attention.

**V. CONFIDENTIALITY**

Information that identifies (a) the subject of an HIV antibody test, (b) the results of any such test for a particular individual, i.e. lab tests, or (c) an individual's HIV status or AIDS diagnosis, is strictly confidential. This information must be maintained in a secured environment, i.e., locked cabinet and separate from general medical or other information. The information can be disclosed only within the boundaries outlined in this section of the policy. "Need to Know" staff (as defined in paragraph B below) will work closely with the individual and/or guardian to ensure that the necessary support and assurance of confidentiality are in place.

A) Physician Reporting Responsibilities
The physician responsible for the care of the individual is the primary manager of the individual diagnosed as having HIV infection and is to follow guidelines established by the Massachusetts Department of Public Health.

1. The physician responsible for the care of the individual is responsible for reporting cases of HIV/AIDS as required to the Massachusetts Department of Public Health's Division of Communicable Disease.

B) Access to HIV Information by Staff of DMR Licensed, Operated, Funded Supports
The head of the facility/provider will designate a staff member who has received HIV training to determine which staff members "need to know" an individual's HIV status. He/she will work with the designated staff member to determine which other staff need to know the diagnosis. Determination of "need to know staff" is based on the benefit to the individual who is HIV positive of having that information shared. Given the requirement that universal precautions must be followed, the number of staff who "need to know" will be limited.
"Need to know staff" may include:

1. An individual directly involved in the care and planning of supports for the person; and/or
2. Other ISP team member(s) designated by the head of the facility/provider who are directly involved in the care and planning of supports for the individual.

C) Access to HIV Information by Persons Other Than "Need to Know" Staff
Each time it is necessary to release Department of Mental Retardation records containing HIV status to persons other than staff with a "need to know," written consent from the individual, if competent, or a person with legal capacity to authorize release, if the individual is incompetent, must be obtained.
There may be circumstances when written consent for release of HIV test results and diagnoses is not obtained, yet reasonable medical practice necessitates release of this information. In such cases, Section 17 of Chapter 123B of the Massachusetts General Laws and the applicable regulations of the Department of Mental Retardation govern the release of records. This enables the release to third parties of individual records where the release is in the individual's best interests. In the event of a conflict with other statutory provisions, such as those relating to HIV testing established by Section 70F of Chapter 111 of the Massachusetts General Laws, the provisions of M.G.L. Chapter 123B shall be followed. Accordingly, absent written consent from the individual or from a person with legal capacity to authorize the release for the individual, the Commissioner or designee, or the head of a facility/provider may authorize the release of medical records containing HIV test results and diagnoses to persons other than Department of Mental Retardation "need to know" staff or providers when release of such information is in the best interests of the individual. Reasons shall be thoroughly documented in the individual "Confidential Medical Information" envelope (see Section VIII for information on medical records).

D) Violation of Confidentiality Requirements
Violation of confidentiality requirements will be investigated pursuant to the Department of Mental Retardation Regulations 115 CMR 9.00 and may lead to sanctions including disciplinary action. Persons are also subject to legal action for violating confidentiality requirements.

**VI. HIV TRANSMISSION - PREVENTION AND TREATMENT PRACTICES IN DMR SUPPORTS**

Since medical history and examination cannot reliably identify all individuals infected with the HIV virus, or other blood-borne pathogens (substances capable of causing disease), precautions for handling blood, body fluids containing visible blood, semen, and vaginal secretions are to be taken for all individuals, regardless of HIV status. This approach, referred to as "Universal Precautions," is recommended by the Federal Centers for Disease Control and will be followed by all people providing direct support. (See Attachment A.)

A) Risk Management
The Department has a unique role and responsibility to both individuals with mental retardation and to the public. In regard to HIV transmission, staff members must follow "Universal Precautions." Staff must be cognizant of and prepared to address behaviors that pose a risk of HIV transmission to the individual and to the public. If staff cannot adequately address the high risk behavior, assistance in determining clinical and/or legal options must be sought at the regional and/or central office level, as necessary. Throughout this process, confidentiality must be diligently maintained.

**VII. HIV ANTIBODY TESTS: INFORMED CONSENT**

A) Indication for HIV Testing/Counseling
HIV antibody testing, with pre and post-test counseling, is recommended on a case by case basis in the following situations:

1. A person's previous or current activities place him/her at high risk for HIV infection;
2. A physician makes a differential diagnosis based on medical symptoms;
3. A physician makes a differential diagnosis between medical and mental illness in the presence of depression, psychosis and/or dementia, when there is indication that those symptoms may be related to HIV infection in the nervous system.

Testing must be voluntary. Written informed consent is required prior to testing and pre and post-test counseling must be offered. Testing, counseling, and early treatment with medical monitoring for persons who test positive must be initiated in accordance with the current Massachusetts Department of Public Health Guidelines.

B) Guidelines for Obtaining Informed Consent
Prior to testing any individual served by the Department of Mental Retardation for HIV infection, written informed consent must be obtained from or for the individual (Attachment B). Any questions or concerns regarding an individual's competence to give informed consent to HIV testing are to be referred to the Department of Mental Retardation's legal office for appropriate action.

C) Consent for Individuals
When the individual is under the age of 18, the person legally able to give informed consent is the parent or legal guardian. When the individual is over the age of 18 and unable to give informed consent, or a guardian has been appointed, the person legally able to give informed consent shall be the guardian.

**VIII. PLACEMENT OF HIV INFORMATION IN THE INDIVIDUAL'S MEDICAL RECORD**

HIV status and other information specific to the diagnosis will be placed in a sealed envelope labeled "Confidential Medical Information" that is to be maintained in the physician's office (or office of the designated health worker or ISP team member). Access to the envelope will be restricted to those authorized staff consistent with Section V

**ATTACHMENT A: UNIVERSAL PRECAUTIONS**

1. Everyone must wear gloves when touching blood, semen, vaginal secretions, or body fluids containing visible blood, when working with individuals, or handling items or surfaces soiled with blood or body fluids. Gloves are recommended while drawing or performing venipunctures (puncturing a vein), or other procedures that would involve access to blood. Everyone must wear gloves while providing direct physical care if their hands have sores, cuts, rashes, or infections. When in doubt wear gloves. Gloves must be changed and hands washed after contact with each individual. It is imperative that gloves be disposed of in plastic lined, covered containers, located in safe and secure areas.
2. During procedures that may cause spattering of blood, semen, vaginal secretions, or body fluids containing visible blood, everyone must take steps to prevent exposure to mucous membranes of the mouth, nose, and eyes. Wear masks, protective eye wear or face shields, and gowns or aprons as necessary.
3. Handwashing is required before and after all procedures. Immediate and thorough washing is necessary if hands or other skin surfaces become contaminated with blood, semen, vaginal secretions, or body fluids containing visible blood. Everyone must wash hands immediately after removing gloves.
4. Anyone using needles, scalpels, and other sharp instruments, including disposable razors must take care to prevent injuries when using these implements. Everyone must be especially careful when performing procedures, cleaning used instruments, disposing of used needles, and handling sharp instruments after procedures. To prevent needle-stick injuries, staff are not to recap, bend, or break needles, remove them from disposable syringes, or otherwise manipulate them by hand.
5. Everyone must place used disposable syringes and needles and other sharp items in puncture resistant containers for disposal. (Place the puncture resistant containers as close as practical to the area where they will be needed.) Large bore reusable needles must be placed in a puncture resistant container for transport to the reprocessing area.
6. To minimize the need for emergency mouth to mouth resuscitation, staff will store mouthpieces, resuscitation bags, and other ventilation devices in areas where the need for resuscitation is most predictable. This includes vehicles used for transportation.
7. Staff will report immediately to their supervisor if they experience any accidental exposures (punctures of the skin with blood or blood contaminated instruments, contact of mucous membrane or open skin lesion with blood, semen, vaginal secretions, or body fluids containing visible blood). Staff will be released for the purpose of seeking immediate medical attention.

**ATTACHMENT B: INFORMED CONSENT FORM**

DMR Confidential Informed Consent Form for HIV Screening Test
I understand that testing for HIV antibody is voluntary and confidential in accordance with DMR statute (M.G.L.c.123B s.17) and DMR Regulations 115 CMR 4.06 regarding confidentiality of individual records. Although I will be asked to give my name and other information for identification, in order to protect my confidentiality, only the code number that I have been given will be used to identify my blood sample and the necessary forms which accompany the specimen to the lab. Results of the screening test will be filed in a confidential folder. It is my personal decision to have this test.

A physician has explained to me the HIV antibody test procedure and the reasons for having the test at this time. I realize the results will not necessarily answer all my questions about HIV/AIDS.

SIGNATURE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_

LEGAL GUARDIAN SIGNATURE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_

I have explained to (Name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the
reasons for having the HIV antibody test at this time. I have explained the results will not necessarily answer all or any questions about HIV/AIDS.

I have explained this procedure and stated the procedure and its results are confidential in accordance with DMR statute (M.G.L.c.123B s.17) and DMR Regulations 115 CMR 4.06 regarding confidentiality of individual records. The blood sample sent to the laboratory will be identified only by an assigned code number which contains no personal identifiers.

I have used no coercion in asking for or presenting information about this test. The information has been presented without bias or misinformation to the best of my knowledge.

PHYSICIAN Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_

I have witnessed the signatures of both parties:

WITNESS Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_