

VR SERVICES FOR INDIVIDUALS LIVING WITH HIV/AIDS

Technical Assistance Brief (May 2015)

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OVERVIEW HIV/AIDS

The Human Immunodeficiency Virus (HIV) produces a deficit in the human immune system which reduces a person's resistance to certain types of infections and cancers. HIV is transmitted through sexual contact with an HIV infected person, direct contact with infected blood, needle sharing with an infected person, and from an infected mother to her child from breast milk, across the placenta or during delivery. HIV is not an airborne transmitted virus, such as the common cold or flu and it cannot live for very long outside the body. It is not contracted from donating blood or body parts or through casual human contact such as handshakes, door knobs and toilet seats. Not everyone exposed to the virus will become infected; it must enter a human immune T-cell in order to reproduce.

The virus may remain in a dormant state in some infected individuals with no significant signs or symptoms for years; however, without treatment, the infection will progress from an initial asymptomatic HIV infection to a symptomatic compromised immune system, leading to clinical Acquired Immune Deficiency Syndrome (AIDS), usually within 10-12 years. Persons infected with HIV may exhibit symptoms that vary in severity and duration which include persistent fever; night sweats; cognitive deficits; fatigue; malaise; weight loss; oral candidiasis and/or diarrhea not due to exercise, diet or other illnesses. HIV may cause intermittent compromises to the person's health at any point.

Stages of Infection

The progression from HIV infection to AIDS is known as the stages of infection.

- Stage 1- Primary HIV Infection Stage: This lasts a few weeks and is often accompanied by flu like illness, fever, sweats, nausea. The individual is highly infectious due to high volume of HIV virus in their blood.
- Stage 2- Clinically Asymptomatic Stage:
This latency period in which the individual may be free from major symptoms (except for possible swollen lymph glands) can last an average of ten years.
- Stage 3- Symptomatic HIV Infection Stage:
The immune system becomes severely damaged by HIV. The lymph nodes and tissues burn out as more T-cells are destroyed than can be replaced.
- Stage 4- HIV Progression to AIDS Stage:
Clinical benchmarks for an AIDS diagnosis are a T-cell count below 200 or the presence of one or more AIDS opportunistic infections or cancers. Once a diagnosis of AIDS is made and/or a return to T-cell counts above 200, the individual does not revert to a pre-AIDS diagnosis of HIV infection.

HIV Testing

New York State Public Health Law Article 27-F requires all health care providers to obtain the consent of the individual to conduct a HIV test or to disclose information to another health care provider. Written consent is required to disclose to most others including ACCES-VR. In NYS all HIV testing is voluntary and requires an individual's consent except in very limited circumstances. Individuals who are at risk of acquiring HIV infection or suspected of being at risk cannot be required to submit to any tests related to HIV infection and ACCES-VR cannot request that the individual be tested for HIV.

Individuals seeking to know their HIV status can be directed to their health care provider or a NYS Department of Health (DOH) testing site where they can be anonymously tested. Positive HIV test results are reported to the NYS DOH. All health care providers are required to document a positive HIV test result in the patient's health care record. Individuals are encouraged to know their status as the knowledge can aid them in deciding when to start treatment and in managing their disability.

Treatment

There is no functional cure for HIV infection or AIDS which can eliminate the virus entirely from the body; however HIV/AIDS can be treated to reduce the amount of virus in the body to an undetectable level and maintain a healthy immune system and delay damage to the body which occurs when an individual has AIDS. The primary medical

treatment is Highly Active Anti-Retroviral Therapy (HAART) treatment for HIV related illnesses. HAART is the taking of three or more different medications in combination. It has reduced the mortality and morbidity of HIV by impeding the replication of the virus by limiting its ability to “copy itself” and preventing the virus from entering healthy human immune cells. Once an individual begins HAART, s/he will be on it for life. Persons living with HIV/AIDS must be more than 95% adherent to their treatment plans in order for the drugs to remain effective. Even missing one dose a month can reduce the drug’s effectiveness. Treatment advances have reduced the overall amount and frequency of medications that must be taken, from 36 pills a day to as little as one pill per day. This has improved treatment adherence. A viral load test, which indicates the amount virus in the body, is used to monitor drug effectiveness and to identify treatment failure.

An individual’s ability to tolerate HAART medications will vary for each person. Side effects can create a number of conditions which can be functionally limiting for individuals. Short term side effects include anemia; diarrhea; fatigue; headaches; nausea; pain and rash. Long term side effects can include liver damage; diabetes; cardiovascular disease; decreased bone density; muscle pain; peripheral neuropathy nerve pain and vision loss, and can impact eligibility, the development and implementation of the vocational plan, and employment services.

Non-Discrimination Policy

The 1990 Americans with Disabilities Act (ADA) and the expanded Rehabilitation Act of 1973 make discrimination on the basis of HIV disability unlawful. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), is designed to protect the privacy of the individual’s medical records and health information, and how it is used and disclosed. Even so, discrimination against individuals who have HIV/AIDS, or are suspected of having HIV/AIDS, continues to exist. Individuals may experience socially ostracizing behavior in community, ethnic, cultural and employment settings. ACCES-VR does not discriminate on the basis of HIV status or AIDS in any of its services and activities. ACCES-VR provides vocational rehabilitation (VR) services for all eligible individuals, including those living with HIV/AIDS.

ELIGIBILITY

HIV/AIDS is a chronic, episodic, and progressive condition. Assessing an individual for eligibility will be different for each individual because HIV/AIDS affects each individual differently. Physical manifestations of HIV/AIDS as well as emotional aspects of the condition must be considered when determining eligibility. ACCES-VR staff should be sensitive to the fear of disclosure many individuals may experience and how that may impact the person’s ability to secure and maintain employment. Referral to AIDS counseling and service programs should be considered for anyone who may request information about HIV/AIDS.

Medical Information

An individual's primary and secondary disability information such as mental illness, substance use disorders, or those disabilities resulting directly from HIV/AIDS or side effects of medications can be obtained from their health care provider with written consent. The information should contain:

- Date of diagnosis of HIV/AIDS
- Stage of infection
- T-cell count and viral load
- Treatment plan
- Medications, side effects and medication adherence
- Co-occurring conditions (i.e. hepatitis, diabetes. etc.)
- Functional limitations
- Prognosis

Eligibility Considerations

Impairment - A person who tests positive for HIV infection is considered to have a physical impairment. A counselor must determine if the impairment is an impediment to employment.

Impediment – The extent to which the impairment substantially impedes that person's ability to enter, engage in, advance in or retain employment. Some individuals with HIV infection may present with no current functional limitations, while others have a broad spectrum of functional limitations which may impact a person's ability to work. Functional limitations may include, but are not limited to, poor work tolerance, stamina, vision problems and inability to concentrate.

Ability to Benefit - There is a presumption that all persons with disabilities can benefit from VR services in terms of an employment outcome. A person can only be determined incapable of benefitting when there is clear and convincing evidence that no employment outcome is possible, even with the provision of VR services. Each case should be evaluated on an individual basis. Before an individual is determined ineligible because of the severity of the disability, the individual must be provided with a trial work experience to determine if s/he can benefit from services. A person may be determined incapable of benefitting when that person with HIV or AIDS is too ill to avail themselves of ACCES-VR services at the time.

Requires Services – Determining whether an individual requires VR services should involve consideration of a variety of factors related to his/her HIV status and possible secondary disabilities. ACCES-VR staff should review the individual's skills, education, work history, aptitude and abilities, motivation and access to formal or informal support networks as well as treatment factors and diagnostic information specific to work limitations. At times, intervening factors such as medical issues, work stamina, diet may impact a person's need for ACCES-VR services. Long term vocational prognosis should

be considered for a person living with HIV/AIDS as their medical condition may worsen and improve at any point during the stages of infection.

Asymptomatic - Individuals who test positive for HIV infection but are asymptomatic may not be eligible for VR services solely on the basis of testing seropositive. There must be work-related functional limitations. Persons who test HIV positive can remain symptom free for prolonged periods before developing HIV illnesses or AIDS.

Symptomatic - Individuals who are symptomatic and have HIV illnesses with functional limitations may meet eligibility requirements. For each applicant with HIV, individual circumstances should be reviewed to determine the severity of the illness, the resulting functional limitations, the vocational implications of the treatment plan and the ability to maintain or acquire employment.

Primary and Secondary Disabilities

Individuals may apply for and receive VR services because they have HIV/AIDS, or when HIV/AIDS is a secondary disability to other conditions such as hepatitis, substance use disorder, etc. If existing documentation about HIV/AIDS to determine eligibility and VR services needs is not available, testing is available at no cost through the NYS DOH. With their voluntary consent, individuals may be referred to a DOH testing facility that is equipped to provide the tests and necessary pre and post-test counseling.

DEVELOPING AN IPE

The ADA prohibits discrimination against people with HIV/AIDS by state licensing groups and occupational training schools for occupations such as barbering; home health care assistance; medical assistance; culinary occupations and phlebotomy. Generally, the only jobs that HIV might disqualify a person from holding are jobs that involve invasive procedures, such as a surgeon, as transmission of HIV is blood borne, not airborne.

The impact of vocational services and employment on an individual's disability and health benefits should be considered when developing the vocational plan. Many individuals living with HIV/AIDS may be eligible for affordable health care and HAART medication coverage through the health exchanges under the Affordable Health Care Act.

The IPE should be flexible and reflect changes that may occur in an individual's physical and mental condition. Periodic opportunistic illnesses may affect their ability to participate in services or to achieve and maintain employment. Consumers may need to provide updated medical information and/or participate in evaluations to address changes that may affect functional limitations and their ability to meet their vocational goal. Employment with employers sensitive to job accommodations such as flexible sick leave and work schedules, work-at-home and modifications in jobs requiring

extensive physical activity should be pursued. Community support groups could be resources for job development.

Some independent living programs offer services to support the well-being of persons with HIV/AIDS. Peer counseling, social support services, referral to community resources, and locating attendants and transportation services can assist persons with HIV infection.

CONFIDENTIALITY

Any information related to an HIV test, the test results, HIV infection, HIV related illness or AIDS, or information which could indicate that a person has been exposed to HIV, is confidential and protected by federal laws, NYS law and ACCES-VR policy, procedures and regulations. These protections provide for both civil and criminal penalties for violations and extreme penalties apply in cases of willful misconduct. Such information cannot be redistributed to third parties without an authorized release.

Handling HIV Information

Recognizing that persons with HIV infection may face discrimination, confidentiality is of the utmost importance to protect the rights of the individual. Only the ACCES-VR staff members that require HIV/AIDS information to fulfill the functions of their job requirements can have access to HIV-related information. ACCES-VR District Office Managers are responsible for ensuring that existing and new staff receive training and information provided by this policy and other resources, as available. HIV related records, including those handled electronically, must be maintained securely, used only for the purpose intended and accessed only on a need-to-know basis.

Requesting Information Related to HIV Infection

ACCES-VR may not request or retain information from any source without signed permission from the individual, or in appropriate circumstances, the legal guardian of the individual. Form VR-30 Authorization for Release of Confidential HIV Related Information is used for all ACCES-VR requests to other agencies.

Releasing Information Related to HIV Infection

Any information in ACCES-VR's possession about a person's HIV status can only be released when the request is accompanied by a release form approved by the NYS DOH and is signed by the individual or his/her legal guardian. When releasing information from ACCES-VR, the information must be accompanied by the form VR-31 Disclosure of HIV/AIDS Related Information. VR-31 identifies who may review the information and states that the information may not be disclosed to other parties without the consumer's knowledge and written permission. The Social Security Release Form (SSA-827) is sufficient documentation to release HIV information to the Department of Social Services' Office of Disability Determination.

Disclosure of HIV Information to Employers; Medical Examinations/Clearance

Anti-discrimination laws limit the circumstances in which employers may ask about disabilities, including HIV. ACCES-VR consumers can consult with legal experts or legal educational materials prior to disclosing their HIV status to an employer or prospective employer. Resources are available through the Legal Action Center, www.lac.org/resources/HIV and U.S. Department of Justice, <http://www.ada.gov/aids/index.htm> .

Medical providers who complete fitness-for-work forms do not always need to disclose their patient's HIV status. The need for disclosure depends on a number of factors, such as the relevance of the patient's HIV status to the job duties. It does not need to be disclosed in response to questions about "communicable diseases" because it is not classified as such in New York. When medical providers do disclose patient's HIV status, it must be done with written consent.

Reasonable Accommodations

The ADA requires businesses to make reasonable accommodations consistent with the needs of the individual and business unless the accommodation would pose an undue hardship on the business. Examples of reasonable accommodations that may be appropriate for persons with HIV/AIDS, especially in situations to maintain or regain employment include, but are not limited to flexible schedules, part-time work, job-sharing, locations near bathrooms, clean air environment, job restructuring, better lighting, work at home, securing a location to rest and other individually determined solutions.

Although individuals may need to disclose that they have a disability as defined by the ADA to obtain an accommodation, they may not need to disclose their specific disability. When considering accommodations, the individual must identify the limitation(s), how it affects job performance and identify accommodations to reduce/eliminate the impediments to their employment.

Glossary

<http://www.virology.net/ATVHIVGlossary.html>

References and Resources

Centers for Disease Control & Prevention. (2006) what is HIV/AIDS? Retrieved March 31, 2011, from <http://www.cdc.gov/hiv/basics/whatishiv.html>

The Body, 2008. The Stages of HIV Disease. Retrieved March 31, 2011, from <http://www.thebody.com/content/whatis/art2506.html>

AVERT Averting HIV/AIDS. How is HIV/AIDS treated and prevented?
<http://www.avert.org/hiv-treatment-as-prevention.htm>

Equal Employment Opportunity Commission (1992). A technical assistance manual on the employment provisions (Title I) of the Americans with Disabilities Act. Retrieved September 5, 2008, from <http://askjan.org/links/ADAtam1.html>

EEOC Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act, as Amended, 29 C.F.R. § 1630 (2011).

NYS Department of Health: <http://www.health.ny.gov/diseases/aids/>

Bailey House New York, NY	http://www.baileyhouse.org/
Damien Center, Albany, NY	http://www.albanydamiencenter.org/
GMHC	http://www.gmhc.org/
HIV AIDS Institute	https://www.health.ny.gov/diseases/aids/
Housing Works	http://www.housingworks.org/
Independent Living Centers	http://www.virtualcil.net/cils/query-iandr.php?state=ny
Legal Action Center	www.lac.org/resources/HIV
NYS Justice Center	http://www.justicecenter.ny.gov/
Social Security Work Incentives	http://www.ssa.gov/disabilityresearch/workincentives.htm
U.S. Department of Justice Civil Rights Division	http://www.ada.gov/aids/index.htm

Statutory Provisions Referenced:

Human Rights Law: New York State Executive Law Article 15 §§290-301

Americans with Disabilities Act:

- Title I—Employment
42 U.S.C. §§ 12111–12117
- Title II—public entities (and public transportation)
42 U.S.C. §§ 12131–12165
- Title III—public accommodations (and commercial facilities)
42 U.S.C. §§ 12181–12189
- Title IV—telecommunications
47 U.S.C. § 225
- Title V—miscellaneous provisions
42 U.S.C. §§ 12201–12213