Legal Note: Confidentiality of HIV/AIDS Information

Generally, HIV or AIDS-related information must be treated like other protected health information and handled in compliance with the requirements of the HIPAA Privacy Regulations. Unlike many states, Arkansas does not provide heightened privacy protections for information concerning a patient’s HIV-positive status or AIDS diagnosis. In fact, state law requires testing and disclosure of HIV/AIDS information under certain circumstances. For example, the Arkansas Code requires that every pregnant woman be tested for syphilis, HIV and hepatitis B as early as possible in the pregnancy, or if prenatal testing is not possible, at delivery. See Ark. Code Ann. § 20-16-507(a)(1)(B).

All records, reports, data or other information related to testing of pregnant women that identifies or could be used to identify any individual patient, provider or institution are confidential, are not subject to discovery in civil litigation, nor are they available under the Arkansas Freedom of Information Act. See Ark. Code Ann. §§25-19-101 through 25-19-109. HIV/AIDS information also must be disclosed under communicable disease regulations.

Healthcare providers must immediately report to the Arkansas Department of Health any “notifiable diseases or conditions,” including AIDS or the presence of HIV antigen or antibodies. The information reported to the Department of Health is protected by Ark. Code Ann. §20-15-904(c)(1), which states that all information and reports in connection with persons suffering from or suspected to be suffering from HIV or AIDS shall be regarded as confidential by any and every person, body or committee whose duty it is or may be to obtain, make, transmit and receive information and reports.

Although Arkansas law does not impose additional privacy requirements for HIV/AIDS information, hospitals should use common sense in handling this type of information and acknowledge its sensitive nature. The American Health Information Management Association (AHIMA) recommends that providers avoid transmitting HIV/AIDS information via facsimile or telephone unless there is an urgent need to do so for healthcare purposes. [See AHIMA Practice Brief: Managing Health Information Relating to Infection with the Human Immunodeficiency Virus]. However, AHIMA also suggests that providers avoid special handling procedures for paper records of HIV-positive patients because these practices are more likely to call attention to the patient’s HIV status than routine handling methods.

Additionally, hospitals should be aware that discrimination against anyone who has HIV/AIDS may violate general non-discrimination laws. For example, the Rehabilitation Act of 1973 prohibits entities that receive federal financial assistance from discriminating against an “otherwise qualified individual with a disability solely by reason of her or his disability” and Title I of the Americans with Disabilities Act (ADA) prohibits discrimination by private employers against a “qualified individual with a disability” who, with or without reasonable accommodation, can perform the essential functions of the desired employment position.

Title III of the ADA also prohibits private businesses from discriminating against individuals with disabilities in the provision of goods or services. [See American Bar Association AIDS Coordinating Committee, Calming AIDS Phobia: Legal Implications of the Low Risk of Transmitting HIV in the Health Care Setting, published in the University of Michigan Journal of Law Reform, Volume 28, Issue 4, 1995]. State anti-discrimination laws may be implicated as well.

Suggested topics for the Legal Note may be submitted to elisawhite@arkhospitals.org. The Legal Note is provided solely for informational purpose and does not constitute legal advice. Readers are encouraged to consult with their own attorneys about any legal issues, including those discussed in this article.