

County health system expands PrEP access

BY MATT SIMONETTE

Cook County Health & Hospitals System (CCHHS), on Sept. 15, announced an initiative to increase access to pre-exposure prophylaxis, or PrEP, for its patients.

The new program funds staff in additional locations on the city's West Side, along with CCHHS' Ruth M. Rothstein CORE Center, to assist patients in obtaining PrEP, an intervention, usually available as the oral medication Truvada, that significantly diminishes the risk of HIV infection. Patients who begin PrEP will be able to see doctors at those locations for follow-up visits and care for other conditions.



David Schwartz, M.D.
Photo by Matt Simonette

The CORE Center received funding from Chicago Department of Public Health (CDPH) in early 2015 to create a PrEP program, but officials determined the scope of those initial efforts were too small, said David Schwartz, M.D., infectious diseases division chairman for CCHHS.

"It started small, one half-day a month, and expanded to three half-days a month," said Schwartz. "This experience was good. It got a lot of people into PrEP. It did not get the numbers as hoped though. Part of the problem was there were not a lot of time slots available. If you're a busy person, you may be working or have other things going on [at those times]. So that was an obstacle."

Schwartz said other obstacles for potential PrEP candidates included working around the high cost of the medication, navigating the county health system logistics and deciding whether or not to take a medication for preventative purposes.

Earlier in 2016, CDPH obtained additional money from the Center for Disease Control and Prevention to expand the program to make PrEP more available to Chicagoans on the West and South Sides. CCHHS used that funding to expand access to two West Side locations, Austin Health Center, 4800 N. Cicero Ave., and Jorge Prieto Family Health Center, 2424 S. Pulaski Rd. The CORE Center, 2020 W. Harrison St., has also expanded its PrEP clinic hours to five days a week at 9 a.m.-3 p.m.

"These are clinics that do general medicine, but the money from the grants is paying for a project coordinator for both sites, and a navigator at each site, whose job it is to help people get started on and maintain PrEP," Schwartz said.

CCHHS provided medical personnel at those clinics with the training to administer PrEP as well. It also expanded the PrEP services at the CORE Center, so that individuals could inquire about it at its walk-in clinic every day. Furthermore, those using the clinic would not be billed for that first visit, at which time staff could help determine whether private insurance, Medicaid or other means could pay for subsequent appointments. Schwartz noted that lab tests for that first visit would also be free.

"Another problem is that when people came in for PrEP, it was just for PrEP—the visit didn't address the other needs of HIV-negative, high-risk people," Schwartz added. CCHHS will now make a concerted effort to get those individuals on their own continuum of care, so providers can address other chronic health conditions or mental health issues, for example, as they arise. Schwartz said that both the CORE Center and the West Side clinics could serve as both gateways and destinations for care for persons seeking PrEP.

"PrEP should not be PrEP and nothing else—it should be part of comprehensive medical care," he added.

Provident Hospital of Cook County, 500 E. 51st St., also obtained funding in the CDPH PrEP initiative. "They hadn't done PrEP previously on a consistent basis, so they are stepping that up," Schwartz said.

The program begins Oct. 19 and will take place the third Wednesday of every month (6:30-8:30 p.m.) until March 15, 2017. People who are interested in learning more about the program, donating food or supplies, or becoming a mentor should contact Jes Scheinpflug at 773-248-5200, ext. 367, or at jscheinpflug@chicagohouse.org.

TPAN's 'Hero' event Sept. 27

Test Positive Aware Network (TPAN) will honor National Gay Men's HIV/AIDS Awareness Day with "Hero: A Gay Men's Health Event" Tuesday, Sept. 27, at 5050 N. Broadway.

Among the slated offerings are inspirational speakers, a meningitis Q&A and a free luncheon presentation on PEP (post-exposure prophylaxis). Also, vaccinations and 15-minute Reiki sessions will be available.

See "HERO: A Gay Men's Health Event" on Facebook.

Chicago House launching TransWorks mentorship Oct. 19

Chicago House is launching its third TransWorks Mentorship Program this fall, beginning Wed., Oct. 19.

The purpose of the program is to facilitate supportive and positive relationships between transgender and gender non-conforming (GNC) individuals in order to build community, increase life skills and create leadership opportunities.

TransWorks is seeking transgender and GNC individuals to participate in the six-month program as mentors. Mentor applicants must have been employed for at least six months by October, and must commit to meeting with the group and with their mentees once a month for six months, a total of three hours per month.

Relationships & the Law Today

BY COURTNEY POSNIK, CLARK HILL PLC



Married on Saturday, fired on Monday: Recent developments in employment law

The Seventh Circuit Court of Appeals recently held that sexual orientation claims are not actionable under Title VII of the Civil Rights Act of 1964. In *Hively v. Ivy Tech Cmty. Coll.*, the court considered a case wherein the plaintiff, a former part-time adjunct professor at Ivy Tech community college, alleged that the college refused to even interview her for any full-time teaching positions for which she applied based on her sexual orientation. 2016 U.S. App. LEXIS 13746 (7th Cir. July 28, 2016).

This issue is not new—courts across the country have considered whether Title VII protects employees from discrimination based on sexual orientation. However, this was the first time a Federal appellate court addressed the question since a July 2015 decision by the Equal Employment Opportunity Commission ("EEOC"), which held that discrimination based on sexual orientation violates Title VII. The *Hively* case sets a significant precedent in sexual orientation discrimination claims, hopefully setting the stage for legislative action or Supreme Court intervention.

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 is a Federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin and religion. Generally, Title VII applies to employers with 15 or more employees. Title VII has a complicated legislative history, which was cited as reasoning in rejecting plaintiff's claims in *Hively*. The original purpose of Title VII was to remedy racial discrimination, and the prohibition of discrimination based on sex "was thrown in at the final hour in an attempt to thwart adoption of the Civil Rights Act as a whole." *Id.* Thus, "sex" has been construed narrowly, with courts holding that Title VII's prohibition on discrimination based on an individual's sex "extends only to discrimination based on a person's gender." *Id.*

Precedent

Also important to the Seventh Circuit in *Hively* was precedent holding that Title VII does not redress sexual orientation discrimination. The court cited two Seventh Circuit cases from 2000, which both relied on a Seventh Circuit case from 1984. All three cases held that "Title VII offers no protection from nor remedies for sexual orientation discrimination." *Id.* Accordingly, the Seventh Circuit in *Hively* held that it was "presumptively bound" by its own precedent "even in the face of an abundance of judicial opinions recognizing an emerging consensus that sexual orientation discrimination in the workplace can no longer be tolerated." *Id.*

EEOC Decision

The EEOC is a federal administrative agency that enforces federal laws prohibiting employment discrimination, including Title VII. In July 2015, for the first time, it held that "sexual orientation is inherently a 'sex-based consideration' and an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under Title VII." *Baldwin v. Foxx*, EEOC Appeal No. 0120133080 (July 16, 2015). While this decision applies to

federal government employees and not the private sector, decisions of the EEOC are entitled to deference by courts.

The EEOC reasoned that the border between sexual orientation discrimination, which is not actionable under Title VII, and discrimination based on sex, which is actionable under Title VII is imprecise and that "sexual orientation is inseparable from and inescapably linked to sex." As an example, the EEOC stated "assume that an employer suspends a lesbian employee for displaying a photo of her female spouse on her desk, but does not suspend a male employee for displaying a photo of his female spouse on his desk. The lesbian employee in that example can allege that her employer took an adverse action against her that the employer would not have taken had she been male." Nonetheless, the Seventh Circuit in *Hively* did not give deference to the EEOC and concluded, based on binding precedent, that "Title VII, as it stands, does not reach discrimination based on sexual orientation."

Implications of *Hively*

The Seventh Circuit in *Hively* understood the potential absurdities that could result from its decision and precedential decisions on this issue. Following its holding, courts must continue to separate gender discrimination claims, which are actionable under Title VII, from sexual orientation claims, which are not actionable. The court admitted that "doing so creates an uncomfortable result in which the more visibly and stereotypically gay or lesbian a plaintiff is in mannerisms, appearance, and behavior, and the more the plaintiff exhibits those behaviors and mannerisms at work, the more likely a court is to recognize a claim of non-conformity which will be cognizable under Title VII as sex discrimination." *Id.* Thus, the line of cases holding that Title VII does not apply to sexual orientation discrimination claims "create[s] a paradoxical legal landscape in which a person can be married on Saturday and then fired on Monday for just that act."

State Anti-Discrimination Laws

Pursuant to *Hively*, "any private employer can summon an employee into his office and state, 'You are a hard-working employee and have added much value to my company, but I am firing you because you are gay.' And the employee would have no recourse whatsoever—unless she happens to live in a state or locality with an anti-discrimination statute that includes sexual orientation." *Id.* Illinois, through the Illinois Human Rights Act, and the City of Chicago, through the Chicago Human Rights Ordinance, prohibit discrimination in employment based on sexual orientation.

However, nearby states including Michigan and Indiana do not have similar state laws prohibiting discrimination based on sexual orientation in the employment context. Thus, a piecemeal approach to this issue varying widely state-to-state will continue until the legislature takes action or until the Supreme Court rules on this issue.

If you are interested in learning more about regulations affecting employment, please feel free to contact any of Clark Hill's experienced attorneys.

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