

ARKANSAS REGISTER

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Transmittal Sheet



NOV 8 1996

SHARON PRIEST
SECRETARY OF STATE

Sharon Priest
Secretary of State
State Capitol Rm. 01
Little Rock, Arkansas 72201-1094

For Office Use Only: Effective Date 1/1/97 Code Number 054.00.96-005

Name of Agency Insurance Department

Department Legal Division

Contact Person Bob Ridgeway or Bruce Heffner Phone 501 371-2820

Statutory Authority for Promulgating Rules ACA §§ 23-61-108, 23-66-201 et seq, 25-15-204 et seq

	Date
Intended Effective Date	Legal Notice Published <u>See Attached</u>
<input type="checkbox"/> Emergency	Final Date for Public Comment <u>12-10-96</u>
<input type="checkbox"/> 10 Days After Filing	Filed With Legislative Council <u>1-4-96</u>
<input checked="" type="checkbox"/> Other	Reviewed by Legislative Council _____
<u>1-1-97</u>	Adopted by State Agency <u>Hearing Date</u>

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted In Compliance with Act 434 of 1967 As Amended.

Signature

501 371-2820
Phone Number

Title

Date

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Arkansas Insurance Department



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Little Rock, AR 72201-1904
1-501-371-2600
1-800-282-9134
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Lee Douglass
Commissioner

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Divisions

Administration
1-501-371-2620

1-501-371-2629 Fax

Accounting
1-501-371-2605

Consumer Services

1-501-371-2640
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Data Processing
1-501-371-2657

Finance
1-501-371-2665

Human Resources
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1-501-371-2690

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Network
1-501-371-2782
1-800-852-5494

Workers'
Compensation
Fraud Unit
1-501-371-2790
1-501-371-2799 Fax

SHARON PRIEST
SECRETARY OF STATE
BY _____

TO: ALL LIFE AND DISABILITY INSURERS, HEALTH MAINTENANCE ORGANIZATIONS, FRATERNAL BENEFIT SOCIETIES, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: PROPOSED AMENDED RULE AND REGULATION 42
"STANDARDS TO PREVENT UNFAIR DISCRIMINATION IN REFERENCE TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV)"

NOTICE OF PUBLIC HEARING

Pursuant to Arkansas Code Annotated Section 23-61-108, 23-66-201 et seq., and 25-15-204, NOTICE is hereby given that a Public Hearing will be held on Tuesday, December 10, 1996, at 9:00 a.m. in the First Floor Hearing Room, Arkansas Insurance Department, 1200 West Third Street, Little Rock, Arkansas 72201.

1. A Public Hearing will be held to determine whether the Insurance Commissioner for the State of Arkansas should adopt the proposed amendment to Rule and Regulation 42. The change involves authority to allow for the developed new technologies in testing for HIV to be used and for the protections to be afforded. A copy of the proposed amendment is attached.

2. All interested persons are encouraged to attend the Public Hearing and may appear and present, orally and in writing, statements, arguments or opinions on the proposed Rule. All insurers are responsible for notifying all Arkansas appointed agents and otherwise of the Hearing.

3. Persons wishing to testify should notify Bruce P. Heffner, CPCU, ARM, Associate Counsel, as soon as possible, and are requested to submit intended statements in writing. Written comments on the proposed Rule are also encouraged.

Sincerely,

Bruce P. Heffner, CPCU, ARM
Associate Counsel

Enclosure

2 STANDARDS TO PREVENT UNFAIR
3 DISCRIMINATION IN REFERENCE TO THE HUMAN
4 IMMUNODEFICIENCY VIRUS (HIV)

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BY SHARON PRIEST
SECRETARY OF STATE

5 SECTION

- 6 1. Purpose
- 7 2. Authority
- 8 3. Applicability
- 9 4. Nondiscriminatory Testing for Human Immunodeficiency Virus (HIV)
- 10 5. Unfair Discrimination
- 11 6. Effective Date
- 12 7. Severability
- 13 8. Form

15 SECTION 1. PURPOSE

16 The purpose of this rule is to establish standards for testing for the
17 presence of Human Immunodeficiency Virus (HIV) and to prevent unfair
18 discriminatory practices. By establishing standards to regulate trade
19 practices the public will be protected from unfair acts or practices
20 while at the same time affording insurers a reasonable basis for
21 continued operation in this State.

22 SECTION 2. AUTHORITY

23 This rule is issued pursuant to the authority vested in the Insurance
24 Commissioner under Ark. Stat. Ann. §23-61-108, §23-66-201 et seq. and
25 §25-15-204.

26 SECTION 3. APPLICABILITY

27 This rule shall apply to all life insurers, disability insurers,
28 fraternal benefit societies, hospital medical service corporations, and
29 health maintenance organizations licensed pursuant to the Arkansas
30 Insurance Code.

31 SECTION 4. NONDISCRIMINATORY TESTING FOR HUMAN IMMUNODEFICIENCY
32 VIRUS (HIV)

33 (a) A proposed insured for life or disability insurance or any
34 other coverage with a company licensed under the Arkansas
35 Insurance Code may be required to be tested for the presence
36 of the human immunodeficiency virus (HIV). Requiring such
37 testing is not unfair discrimination provided:

38 (1) The testing is required on a nondiscriminatory basis for
39 all individuals in the same class; and

40 (2) No proposed insured is denied coverage or related as
41 substandard risk on the basis of such testing unless:

- 1 (A) An initial enzyme linked immunosorbent assay (ELISA)
2 blood test is administered to the proposed insured, and
3 it indicates the presence of HIV antibodies in the
4 blood;
- 5 (B) A second ELISA blood test is conducted and it indicates
6 the presence of HIV antibodies in the blood; and
- 7 (C) A Western Blot blood test is conducted and the results
8 of such test are not negative.
- 9 (b) The Commissioner may prescribe by Bulletin other bleed
10 tests to be used in complying with Section 4(a)(2).
11 These tests must be recognized by the Director of the
12 Arkansas Department of Health as acceptable for testing
13 for the human immunodeficiency virus.

14 SECTION 5. UNFAIR DISCRIMINATION

15 (a) General Propositions

- 16 (1) No inquiry in an application for disability or life insurance
17 coverage, or in an investigation conducted by or on behalf of
18 an insurer in connection with an application for such
19 coverage, shall be directed toward determining the proposed
20 insured's sexual orientation.
- 21 (2) Sexual orientation may not be used in the underwriting
22 process or in the determination of insurability.
- 23 (3) Insurers shall not direct, require or request insurance
24 support organizations to investigate, directly or indirectly,
25 the sexual orientation of proposed insured or a beneficiary.
- 26 (b) Medical/lifestyle applications questions and underwriting
27 standards.
- 28 (1) No question shall be used which is designed to establish the
29 sexual orientation of the proposed insured.
- 30 (2) Questions relating to the proposed insured having, or having
31 been diagnosed or having, acquired immune deficiency syndrome
32 (AIDS) or AIDS-related complex are permissible if they are
33 factual and designed to establish the existence of the
34 condition.
- 35 (3) Questions relating to medical and other factual matters
36 intending to reveal the possible existence of a medical
37 condition are permissible if they are not used as a proxy to
38 establish the sexual orientation of the proposed insured, and
39 the proposed insured has given an opportunity to provide an
40 explanation for any affirmative answers given in the
41 application.

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- (4) Questions relating to the proposed insured's having, or having been diagnosed as having, sexually transmitted disease are permissible.
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- (5) Neither the marital status, the living arrangements, the occupation, the gender, the medical history, the beneficiary designation, nor the zip code or other territorial classification of a proposed insured's sexual orientation.
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- (6) For purposes of rating a proposed insured for health and life insurance, an insurer may impose territorial rates, but only if the rates are based on sound actuarial principles or are related to actual or reasonably anticipated experience.
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- (7) No adverse underwriting decision shall be made because medical records or a report from any other source shows that the proposed insured has demonstrated acquired immune deficiency syndrome-related concerns by seeking counseling from health care professionals. This paragraph does not apply to a proposed insured seeking or having sought treatment.
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- (8) Whenever a proposed insured is requested to take an AIDS-related test in connection with an application for insurance, the use of such a test must be revealed to the proposed insured or to any other person legally authorized to consent to such a test, and his or her written authorization obtained. The form of such authorization must be printed on a separate piece of paper and must contain the specific language in the form, entitled "Notice and Consent for AIDS Virus (HIV) Testing". This form is found in Section 8 of this rule. Other information may be included so long as it is not misleading or violative of any applicable law or rule. Testing may be required only on a non-discriminatory basis. No adverse underwriting decision shall be made on the basis of such a positive AIDS-related test unless the established test protocol as provided herein has been followed.
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- (9) Insurers are permitted to ask a proposed insured whether the proposed insured has tested positive on an acquired immune deficiency syndrome-related blood test.
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- (10) The result of an AIDS-related test shall be confidential.
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- (A) An insurer may not release or disclose such result or allow it to become known, except in the following circumstances:
- 41
- (i) as may be required by law; or
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- (ii) pursuant to the written request or authorization of the proposed insured or other person legally authorized to consent to the test on behalf of the proposed insured,

1 with such release pursuant to written request limited
2 to:

- 3 (1) the proposed insured;
- 4 (2) the person legally authorized to consent to the test;
- 5 (3) a licensed physician, medical practitioner, or other
6 person designated by the proposed insured;
- 7 (4) an insurance medical information exchange under
8 procedures that are designed to assure confidentiality,
9 including the use of general codes that also cover
10 results of tests for other diseases or conditions not
11 related to AIDS, or for preparation of statistical
12 reports that do not disclose the identify of any
13 particular proposed insured;
- 14 (5) a reinsurer, if the reinsurer is involved in the
15 underwriting process, under procedures that are designed
16 to assume confidentiality;
- 17 (6) persons who have the responsibility to make underwriting
18 decisions on behalf of the insurer; or
- 19 (7) insurer's legal counsel who needs such information to
20 effectively represent the insurer in regard to matters
21 concerning the proposed insured.

22 (B) Should a proposed insured or the person legally authorized to
23 consent to the test request that notification of a positive
24 test result be sent to him or her personally, the insurer
25 shall mail the test result to the proposed insured or the
26 person legally authorized to consent to the test by
27 registered mail with delivery restricted to the addressee. A
28 copy of the brochure entitled "LATEST FACTS ABOUT AIDS - If
29 Your Test for Antibody to the AIDS Virus Is Positive,"
30 published jointly by the United States Public Health Service
31 and the American Red Cross, or of a substantially similar
32 publication, shall accompany such notification.

33 (C) Should a proposed insured, or the person legally authorized
34 to consent to the test, request that notification of a
35 positive test result be sent to any person other than himself
36 or herself or a physician, the insurer shall mail same to the
37 person designated in the consent form by registered mail with
38 delivery restricted to the addressee.

39 SECTION 6. EFFECTIVE DATE

40 This rule shall be effective December 31, 1996.

41 SECTION 7. SEVERABILITY

1 Any section or provision of this rule held by a court to be invalid or
2 unconstitutional shall not affect the validity of any other section or
3 provision.

4 SECTION 8. FORM

5 The attached form is made a part of this regulation and shall be used
6 when so required by this rule.

7 NOTICE AND CONSENT FORM FOR AIDS
8 VIRUS (HIV) TESTING

9 To evaluate your eligibility for insurance or insurance benefits, it is
10 requested that you consent to be tested for the AIDS virus (HIV). By
11 signing and dating this form, you agree that this test may be performed
12 and that underwriting decisions will be based on the test results.

13 DISCLOSURE OF TEST RESULTS:

14 All test results will be treated confidentially. The results of the
15 test will be reported to the insurer identified on this form. Results
16 of the tests will not otherwise be disclosed except as allowed by law
17 or as stated below.

18 MEANING OF TEST RESULTS:

19 While positive HIV antibody test results do not mean that you have
20 AIDS, they do mean that you may be at increased risk of developing AIDS
21 or AIDS-related conditions. The test is a test for antibodies to the
22 HIV virus, the causative agent for AIDS, and shows whether you have
23 been exposed to the virus.

24 Positive HIV antibody test results could adversely affect your
25 application for insurance. This mean that your application may be
26 declined, that an increased premium may be charged, or that other
27 policy changes may be necessary.

28 RELEASE OF RESULTS:

29 The results of this test may be released to the following:

- 30 (1) the proposed insured;
- 31 (2) the person legally authorized to consent to the test;
- 32 (3) a licensed physician, medical practitioner, or other person
33 designated by the proposed insured;
- 34 (4) an insurance medical information exchange under procedures
35 that are designed to assure confidentiality, including the
36 use of general codes that also cover results of tests for
37 other diseases or conditions not related to AIDS, or for the
38 preparation of statistical reports that do not disclose the

- 1 identity of any particular proposed insured;
- 2 (5) a reinsurer, if the reinsurer is involved in the underwriting
3 process, under procedures that are designed to assure
4 confidentiality;
- 5 (6) persons who have the responsibility to make underwriting
6 decisions on behalf of the insurer; or
- 7 (7) insurer's legal counsel who needs such information to
8 effectively represent the insurer in regard to matters
9 concerning the proposed insured.

10 The insurer may contact you for the name of a physician or other health
11 care provider to whom you may authorize disclosure and with whom you
12 may want to discuss the results.

13 CONSENT:

14 I have read and I understand this Notice and Consent Form. I
15 voluntarily consent to testing and disclosure as described above. I
16 understand that I have the right to request and receive a copy of this
17 form. A photocopy of this form will be as valid as the original.

18 Date: _____

19 _____
20 Signature of Proposed Insured or
21 Parent/Guardian