

ARKANSAS REGISTER

FILED

Transmittal Sheet

JAN 27 1997



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 12/31/96 Code Number 054.00.97--003

Name of Agency Insurance Department

Department Legal

Contact Person BRUCE HEFFNER Phone 501 371-2820

Statutory Authority for Promulgating Rules 23-61-108; 23-66-201; 25-15-204

	Date
Intended Effective Date	Legal Notice Published <u>sec 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>11-4-96</u>
<input checked="" type="checkbox"/> Other	(APPOINTMENT) Reviewed by Legislative Council <u>1-2-97</u>
<u>12-31-96</u>	Adopted by State Agency <u>12-31-96</u>

CERTIFICATION OF AUTHORIZED OFFICER

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

Dean Langford
Signature

501 371-2820
Phone Number

Chief Counsel
Title

1-27-97
Date

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

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**SHARON PRIEST
SECRETARY OF STATE**

5 SECTION

- 6 1. Purpose
- 7 2. Authority
- 8 3. Applicability
- 9 4. Nondiscriminatory Testing for Human ~~Immunodeficiency Virus~~ ^{BY}
- 10 (HIV)
- 11 5. Unfair Discrimination
- 12 6. Effective Date
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- 14 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. Code 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 rated as
41 substandard risk on the basis of such testing unless:

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

13 SECTION 5. UNFAIR DISCRIMINATION

14 (a) General Propositions

15 (1) No inquiry in an application for disability or life insurance
16 coverage, or in an investigation conducted by or on behalf of
17 an insurer in connection with an application for such
18 coverage, shall be directed toward determining the proposed
19 insured's sexual orientation.

20 (2) Sexual orientation may not be used in the underwriting
21 process or in the determination of insurability.

22 (3) Insurers shall not direct, require or request insurance
23 support organizations to investigate, directly or indirectly,
24 the sexual orientation of proposed insured or a beneficiary.

25 (b) Medical/lifestyle applications questions and underwriting
26 standards.

27 (1) No question shall be used which is designed to establish the
28 sexual orientation of the proposed insured.

29 (2) Questions relating to the proposed insured having, or having
30 been diagnosed as having, acquired immune deficiency syndrome
31 (AIDS) or AIDS-related complex are permissible if they are
32 factual and designed to establish the existence of the
33 condition.

34 (3) Questions relating to medical and other factual matters
35 intending to reveal the possible existence of a medical
36 condition are permissible if they are not used as a proxy to
37 establish the sexual orientation of the proposed insured, and
38 the proposed insured has been given an opportunity to provide
39 an explanation for any affirmative answers given in the
40 application.

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

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

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

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

40 SECTION 6. EFFECTIVE DATE

41 This rule shall be effective December 31, 1996.

42 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 means 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

- 1 preparation of statistical reports that do not disclose the
2 identity of any particular proposed insured;
- 3 (5) a reinsurer, if the reinsurer is involved in the underwriting
4 process, under procedures that are designed to assure
5 confidentiality;
- 6 (6) persons who have the responsibility to make underwriting
7 decisions on behalf of the insurer; or
- 8 (7) insurer's legal counsel who needs such information to
9 effectively represent the insurer in regard to matters
10 concerning the proposed insured.

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


14 CONSENT:

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

19 Date: _____

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22

Signature of Proposed Insured or
Parent/Guardian



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LEE DOUGLASS
INSURANCE COMMISSIONER
STATE OF ARKANSAS

27
28

12-30-96

DATE