

DISTRICT OF COLUMBIA

39-5408. HTLV-III antibody. - Every hospital, bank or other storage facility where a person has donated semen shall use all reasonable means to detect if the donor has an antibody to HTLV-III in his blood. In the event that an antibody to HTLV-III is detected, such semen shall not be used for any purposes of artificial insemination.

As used in this section, "HTLV-III" means the human T-cell lymphotropic virus type III that causes acquired immunodeficiency syndrome.

CHAPTER 28. AIDS HEALTH CARE.

Sec.

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6-2801. Definitions.

For the purpose of this chapter, the term:

- (1) "AIDS" means acquired immune deficiency syndrome or any AIDS-related condition.
- (2) "Council" means the Council of the District of Columbia.
- (3) "Director" means the Director of the Department of Human Services, established by Reorganization Plan No. 2 of 1979, approved February 21, 1980.
- (4) "Families" means persons who are related by blood, legal custody, marriage, having a child in common, or who share or have shared for at least 1 year a mutual residence and who maintain or have maintained an intimate relationship rendering the application of this chapter appropriate.
- (5) "Mayor" means the Mayor of the District of Columbia.

6-2802. Comprehensive AIDS Health-Care Response Plan.

(a) Within 6 months of December 30, 1985, the Mayor shall develop and present to the Council for its review and comment a comprehensive AIDS Health-Care Response Plan for the District of Columbia. The plan shall include, but not be limited to, the development of short-term and long-term goals and schemes for administrative coordination by District government agencies, educational programs, prevention methods and programs, a compilation of private sector services available to AIDS patients, medical research and information gathering, outpatient and inpatient health-care services delivery, social services delivery, exploration of the feasibility of establishing a separate compensation rate for District employees working in the health-care treatment facility or facilities contemplated in 6-2803, housing, and identifying other general services needs.

(b) The Mayor shall update annually the comprehensive plan mandated by subsection (a) of this section.

6-2803. Residential health-care facility.

(a) In preparing the comprehensive plan mandated in 6-2802, the Mayor shall investigate the need for a residential health-care facility or facilities which shall provide a program of medical, nursing, counseling, palliative, social, recreational, and supportive services to AIDS patients and their families.

(b) If, following an investigation, the Mayor identifies a need for a residential health-care facility or facilities in the District of Columbia, the Mayor shall establish the facility or facilities.

(c) In order to establish the facility or facilities, the Mayor may acquire, by purchase, rehabilitation, condemnation, rental, or otherwise, a building or buildings suitable for use as a residential health-care facility or facilities including furniture, medical equipment, and other necessary accessories.

(d) The Mayor may enter into contractual arrangements with any agency or organization qualified to provide the services enumerated in subsection (a) of this section.

6-2804. AIDS Program Coordination Office.

(a) The Mayor shall establish, within the Department of Human Services an AIDS Program Coordination Office.

(b) The AIDS Program Coordination Office shall be supervised by the AIDS

Program Coordination Officer who shall, at the direction of the Director of the Department of Human Services, be responsible for the coordination of and serving as the point of contact for the District of Columbia's comprehensive AIDS Health-Care Response Plan established by 6-2802.

(c) The AIDS Program Coordination Officer shall:

- (1) Analyze medical data, reports, and information to determine the effectiveness with which the AIDS program is meeting the needs of the residents of the District of Columbia;
- (2) Coordinate and assist in the development of grant proposals to obtain funds from both the federal government and the private sector for AIDS and AIDS-related activities;
- (3) Develop and coordinate, with other agencies of the District government, a program of health-care services delivery and other supportive services for persons with AIDS living at home;
- (4) Disseminate information on AIDS to the public;
- (5) Assist officials from the federal government, community groups, nursing homes, hospitals, and others in the coordination of AIDS plans, programs, and services delivery for persons with AIDS living in the District of Columbia;
- (6) Serve as the liaison officer for the District's AIDS program to other District government agencies and monitor their compliance with the District's comprehensive AIDS program;
- (7) Conduct community outreach and education programs; and
- (8) Perform other duties appropriate to accomplish the objectives of this chapter.

6-2805. Confidentiality of medical records and information.

The provisions of the Preventive Health Services Amendments Act of 1985 (D.C. Law 6-83), pertaining to the confidentiality of medical records and information on persons with AIDS, shall be applicable to this chapter.

6-2806. Rules.

The Mayor may issue rules necessary to implement this chapter pursuant to subchapter I of Chapter 15 of Title 1.

Subchapter III Prohibition of Discrimination in the Provision of Insurance on Basis of AIDS Test.

35-221. Definitions.

For the purposes of this subchapter, the term:

- (1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.
- (2) "ARC" means AIDS-related complex as defined by the Centers for Disease Control of the United States Public Health Service or, during any period when the Centers for Disease Control have not issued a definition, by the District of Columbia Commission of Public Health.
- (3) "District" means the District of Columbia.
- (4) "Health maintenance organization" means a public or private organization that is a qualifying health maintenance organization under federal regulations, or has been determined to be a health maintenance organization pursuant to regulations adopted by the State Health Planning and Development Agency of the District of Columbia.
- (5) "HTLV-III" means human T-lymphotropic virus, type-III.
- (6) "Mayor" means the Mayor of the District of Columbia.
- (7) "Insurer" means any individual, partnership, corporation, association, fraternal benefit association, nonprofit health service plan, health maintenance organization, or other business entity that issues, amends, or renews individual or group health, disability, or life insurance policies or contracts, including health maintenance organization membership contracts, in the District. The term "insurer" shall include Group Hospitalization and Medical Services, Incorporated.

35-222. Application of subchapter.

The requirements of this subchapter shall apply to the practices and procedures employed by insurers and their agents and employees in making determinations about any individual or group policy or contract of health, disability, or life insurance.

35-223. Prohibited actions.

(a) An insurer may not deny, cancel, or refuse to renew insurance coverage, or alter benefits covered or expenses reimbursable, because an individual has tested positive on any test to screen for the presence of any probable causative agent of AIDS, ARC, or the HTLV-III infection, including, but not limited to, a test to screen for the presence of any antibody to the HTLV-III virus or because an individual has declined to take such a test.

(b) (1) In determining whether to issue, cancel, or renew insurance coverage, an insurer may not use age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor or combination of factors for the purpose of seeking to predict whether any individual may in the future develop AIDS or ARC.

(2) In determining rates, premiums, dues, assessments, benefits covered, or expenses reimbursable, or in any other aspect of insurance marketing or coverage, an insurer may not use age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor or combination of factors for the purpose of seeking to predict whether any individual may in the future develop AIDS or ARC.

(c) No health or disability insurance policy or contract shall contain any exclusion, reduction, other limitation of coverage, deductibles, or coinsurance provisions related to the care and treatment of AIDS, ARC, HTLV-III infection, or any illness or disease arising from these medical conditions, unless the provisions apply generally to all benefits under the policy or contract.

(d) No life insurance policy or contract shall contain any exclusion, reduction, or other limitation of benefits related to AIDS, ARC, HTLV-III infection, or any disease arising from these medical conditions, as a cause of death.

35-224. Permissible use of tests for ratemaking purposes.

(a) In addition to the prohibitions set forth in 35-223, an insurer, during the period of 5 years from August 7, 1986, may not:

(1) Require or request any individual, directly or indirectly, to take any test to screen for the presence of any probable causative agent of AIDS, ARC, or the HTLV-III infection, including, but not limited to, a test to screen for the presence of any antibody to the HTLV-III virus;

(2) Require or request any individual, directly or indirectly, to disclose whether he or she has taken such a test, or to provide or authorize disclosure of the results of the test, if taken by the individual; or

(3) Consider in the determination of rates, premiums, dues, or assessments whether any individual has taken such a test, or the results of the

test, if taken by the individual.

(b) (1) Following the period of 5 years from August 7, 1986, an insurer may apply to the Superintendent of Insurance for permission to increase rates, premiums, dues, or assessments, or impose a surcharge, for individuals who test positive for exposure to the probable causative agent of AIDS. An insurer, in its application, shall identify the test it proposes to use to identify exposure to the probable causative agent of AIDS.

(2) (A) The Superintendent of Insurance, upon receipt of an application described in paragraph (1) of this subsection, shall first request the District of Columbia Commissioner of Public Health to determine whether the test proposed by the applicant is reliable and accurate in identifying exposure to the probable causative agent of AIDS.

(B) If the District of Columbia Commissioner of Public Health determines that the test is not reliable and accurate, the Superintendent of Insurance shall deny the application.

(C) If the District of Columbia Commissioner of Public Health determines that the test is reliable and accurate, the Superintendent of Insurance shall review the application further and may approve the proposed increase or surcharge if he or she determines that it is fair, reasonable, nondiscriminatory, and related to actual experience or based on sound actuarial principles applied to analyses of a substantial amount of scientific data collected over a period of years.

(D) Upon approval of an application for an increase or surcharge, an insurer may subsequently request or require individuals to take the test specified in its application and may impose the surcharge or increased rates, premiums, dues, or assessments upon those who test positive and those who decline to take the test.

35-225. Diagnosis of AIDS.

(a) Nothing in this subchapter shall be construed as preventing or restricting insurers or their agents or employees from following standard procedures for determining the insurability of or establishing the rates or premiums for new applicants diagnosed by a licensed physician as having AIDS, provided that the procedures:

(1) Apply in the same manner to all other new applicants within the same category of insurance;

(2) Are justified on the basis of actuarial evidence; and

(3) Comply with other laws and rules of the District.

(b) An insurer may request or require a new applicant to take a test otherwise prohibited by this subchapter if:

(1) The test is administered by a licensed physician as a required element of a diagnosis of AIDS; and

(2) Other symptoms of AIDS, as specified by the Centers for Disease Control of the United States Public Health Service, are present to the degree that a licensed physician determines that administration of the test is medically indicated.

35-226. Restrictions on disclosure.

No insurer may request or require an individual to take a test or series of tests pursuant to 35-224 or 35-225 unless:

(1) The insurer agrees not to disclose the fact of the testing or the test results to any person except as required by law, or as authorized by the individual in writing; and

(2) The individual provides his or her informed consent by signing and dating a statement of agreement, which identifies the specific test or tests to be performed and identifies the person or persons to whom disclosure is authorized.

35-227. Contestability.

An insurer may contest the validity of a policy or contract that was issued, amended, or renewed in a period in which the determination provided in 35-224 (b) is not in effect for a period of up to 3 years from the date of issuance, amendment, or renewal, if the basis for contesting the validity is that the insured knowingly failed or refused to disclose to the insurer that he or she had AIDS at the time of issuance, amendment, or renewal.

35-228. Special enforcement provisions.

(a) Any practice that circumvents or contravenes or results in a circumvention or contravention of the provisions of this subchapter or rules issued pursuant to this subchapter is a violation of this subchapter.

(b) Each day that a violation continues shall constitute a separate violation. The Corporation Counsel, in seeking penalties for each day of a continuing violation, shall establish to the satisfaction of the Superior Court of the District of Columbia that a violation occurred on each day for which the

penalty is sought.

(c) An insurer or its agent or employee who violates any provision of this subchapter or rules issued pursuant to this subchapter shall be subject to a civil penalty of not less than \$1,000 or more than \$10,000 per violation in the case of insurers, and not less than \$50 or more than \$300 in the case of agents or employees.

(d) Whenever it appears to the Mayor that an insurer or its agent or employee has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this subchapter or rules issued pursuant to this subchapter, the Mayor shall request the Corporation Counsel to bring an action in the Superior Court of the District of Columbia for penalties and other appropriate relief. Relief may include an injunction commanding compliance with this subchapter and rules issued pursuant to this subchapter. Upon proper showing, a temporary or permanent restraining order shall be granted without bond.

(e) Any person injured by a violation of this subchapter or rules issued pursuant to this subchapter may bring an action for damages and other appropriate relief in the Superior Court of the District of Columbia in lieu of pursuing administrative remedies.

35-229. Rules.

The Mayor shall issue proposed rules, within 90 days of August 7, 1986, to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council of the District of Columbia ("Council") for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not disapprove the proposed rules by resolution, within the 45-day review period, the proposed rules shall be deemed approved. The Council may approve or disapprove the proposed rules, in whole or in part, by resolution prior to the expiration of the 45-day review period.

35-223. Prohibited actions.

(a) Repealed.

(c) No health or disability insurance policy or contract shall contain any exclusion, reduction, other limitation of coverage, deductibles, or coinsurance provisions related to the care and treatment of AIDS, ARC, HIV infection, or any illness or disease arising from these medical conditions, unless the provisions apply generally to all benefits under the policy or contract.

(d) No life insurance policy or contract shall contain any exclusion, reduction, or other limitation of benefits related to AIDS, ARC, HIV infection, or any disease arising from these medical conditions, as a cause of death.

35-224. AIDS testing standards, protocols, and appeals.

(a) (1) Within 30 days of March 16, 1989, the District of Columbia Commissioner of Public Health ("Commissioner") shall certify the testing protocol that is the most reliable and accurate in identifying exposure to the probable causative agent of AIDS, ARC, and the HIV infection. The notice of certification shall include an estimate based on scientific evidence of the proportion of false positive results expected in use of the testing protocol.

(2) Within 12 months from the date of the initial certification and at least annually thereafter, the Commissioner shall publish a new or renewal certification based upon an ongoing review of scientific evidence regarding the accuracy and reliability of the testing protocol.

(b) (1) A named insured who tests positive under the testing protocol certified by the Commissioner may appeal to the Superintendent of Insurance ("Superintendent") to review the testing procedures and results, and may present additional medical evidence, including the results of similar tests for exposure to the probable causative agent of AIDS that the named insured independently obtains, to rebut the positive test results. If the Superintendent determines that the result of the test of the proposed insured is not a true positive, the Superintendent shall order the insurer from which the applicant sought coverage to disregard the positive test result. The Superintendent shall, when necessary, request the advice of the Commissioner in making this determination.

(2) Hearings related to the appeal provided for in paragraph (1) of this subsection shall be held in accordance with subchapter I of Chapter 15 of Title 1.

(3) An insurer shall apply standard underwriting practices, in accordance with applicable laws and rules of the District, to all life, health, or disability income insurance policies or contracts for individuals who test positive under the testing protocol certified by the Commissioner.

35-225. Diagnosis of AIDS.

(b) Repealed. (Aug. 7, 1986, D.C. Law 6-132, § 6, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(d), 36 DCR 471.)

35-226. Informed consent requirements; restrictions on disclosure.

(a) No insurer shall request or require a proposed insured to take the testing protocol certified pursuant to 35-224 without first obtaining the signature of the proposed insured or the legal guardian of the named insured on a standard informed consent statement prepared and furnished by the Superintendent.

(b) An insurer shall provide information about the availability of counseling at public and private health facilities to each proposed insured who the insurer requests or requires to take the testing protocol.

(c) Before any proposed insured or his or her legal guardian is requested to sign an informed consent statement, the insurer shall provide the proposed insured or his or her legal guardian an explanation of the nature of AIDS, ARC, and the HIV infection, an explanation of the testing protocol, including its purpose, potential uses, limitations, and an updated percentage of false positives, and notice of the right of the proposed insured to appeal to the Superintendent of Insurance, an explanation of the meaning of test results, and a description of the disclosure restrictions established by this subchapter.

(d) Once an insurer has requested a signature on an informed consent statement pursuant to subsection (a) of this section, and has complied with subsections (b) and (c) of this section, the proposed insured or legal guardian of the proposed insured may wait 14 days before signing the informed consent statement.

(1) An insurer shall not disclose the fact that a proposed insured was tested or the results of the test except to:

(A) The proposed insured or the legal guardian of the proposed insured;

(B) A court of competent jurisdiction, pursuant to a lawful court order;

or

(C) Any person named in a written authorization executed by the proposed insured or the legal guardian of the proposed insured.

(2) An insurer that requires testing of a proposed insured shall maintain records and establish procedures in a manner that protects the privacy of the proposed insured and the confidentiality of the test results.

(3) (A) The Superintendent of Insurance may, by rule, require an insurer to report numerical data regarding test results to the Commissioner for the limited purpose of performing epidemiological studies. The name, address, or other information that reveals the identity of the individual tested shall not be reported to the Superintendent.

(B) An insurer shall report numerical data regarding test results to actuaries employed or consulted by the insurer for the limited purpose of performing actuarial studies related to the business of insurance. The name, address, or other information that reveals the identity of the individual tested shall not be reported to the actuaries.

35-227. Contestability.

An insurer may contest the validity of a policy or contract for 3 years from the date of issuance, amendment, or renewal of the policy or contract, if the basis for contesting the validity is that the insured knowingly failed or refused to disclose to the insurer that he or she had AIDS at the time of issuance, amendment, or renewal of any policy issued under this subchapter, and the insurance company was prohibited by law from conducting a test to determine the exposure of the insured to the AIDS virus on the date the insurer and insured entered into a contract.

35-228. Special enforcement provisions.

(a) An insurer or an agent, broker or employee of the insurer who violates any provision of this subchapter or rule issued pursuant to this subchapter shall be subject to the suspension or revocation of its license or certificate of authority to transact business in the District, as appropriate, in accordance with the provisions of 35-405, 35-426, 35-1506, and 35-1540, or other applicable District laws.

(b) Any person who violates the restrictions on disclosure in 35-226(d) shall be fined not less than \$500 or more than \$5,000 for each disclosure. In the case of an insurer or an agent, broker or employee of an insurer, the fine shall be in addition to the penalties provided in subsection (a) of this section.

(c) Any person injured as the result of a violation of this subchapter or a rule issued pursuant to this subchapter, may bring an action for civil damages and other appropriate relief in the Superior Court of the District of Columbia without first pursuing administrative remedies.

35-230. Prohibition against discrimination in use of AIDS tests.

(a) No insurer shall inquire about the sexual orientation of an applicant in an application for health, life, or disability income insurance coverage or in an investigation conducted by an insurer or insurance support organization on behalf of an insurer in connection with an application for the coverage.

- (b) Sexual orientation shall not be used as a factor in the underwriting process or in the determination of insurability.
- (c) Insurance support organizations shall be directed by insurers not to investigate, directly or indirectly, the sexual orientation of a proposed insured.
- (d) An insurance company shall not use sexual orientation, lifestyle, living arrangements, occupation, gender, or beneficiary designation to determine whether to test an individual who applies for life, health, or disability income insurance.