

# Medical Testing

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Model Regulation Service — July 1987

## Medical/Lifestyle Questions and Underwriting Guidelines

### PROPOSED BULLETIN

(Effective Date)

**SUBJECT:** Medical Lifestyle Questions on Applications and Underwriting Guidelines Affecting AIDS and ARC

(Recital of applicable authority if needed and purpose of bulletin. Issuance of bulletin is to assist insurers to formulate and design medical/lifestyle questions in applications for and underwriting standards affecting health and or life insurance coverage in conformity with the fair standards adopted by the .NAIC at its December 1986 meeting. 1

#### I. General Propositions

- A. No inquiry in an application for health or life insurance coverage, or in an investigation conducted by an insurer or an insurance support organization on its behalf in connection with an application for such coverage, shall be directed toward determining the applicant-s sexual orientation.
- B. Sexual orientation may not be used 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 an applicant or a beneficiary.

#### H. Medical Lifestyle Applications Questions and Underwriting Standards

- A. No question shall be used which is designed to establish the sexual orientation of the applicant.
- B. Questions relating to the applicant having or having been diagnosed as having AIDS or ARC are permissible if they are factual and designed to establish the existence of the condition.

For Example: Insurers should not ask “do you believe you may have . . .?” , but rather “do you know or have reasons to know . . .?”

- C. Questions relating to medical and other factual matters intending to reveal the possible existence of a medical condition are permissible if they are not used as a proxy to establish the sexual orientation of the applicant, and the applicant has been given an opportunity to provide an explanation for any affirmative answers given in the application.

For Example: “Have you had chronic cough, significant weight loss, chronic fatigue, diarrhea, enlarged glands, . . .?” These types of questions should be related to a finite

period of time preceding completion of the application and should be specific. All of the questions above should provide the applicant the opportunity to give a detailed explanation.

- D. Questions relating to the applicant's having or having been diagnosed as having or having been advised to seek treatment for a sexually transmitted disease are permissible.
- E. 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 an applicant may be used to establish, or aid in establishing, the applicant's sexual orientation.
- F. For purposes of rating an applicant 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.
- G. No adverse underwriting decision shall be made because medical records or a report from an insurance support organization shows that the applicant has demonstrated AIDS-related concerns by seeking counseling from health care professionals. This subsection does not apply to an applicant seeking treatment and/or diagnosis.

[Provision for States permitting testing]

- H. Whenever an applicant 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 applicant and his or her written consent obtained. No adverse underwriting decision shall be made on the basis of such a positive AIDS-related test unless an established test protocol has been followed.

Note: "Established test protocol" means the protocol adopted in a particular state. At a minimum, it requires two positive ELISA tests. In some states, it also includes one positive Western blot. It is anticipated that new and more effective AIDS-related tests will be developed which might replace those currently in use.

- I. Options to be considered by each state.

Alternative A. Insurers should not be permitted to ask an applicant whether he or she has tested positive on an AIDS-related blood test.

Alternative B. Insurers should be permitted to ask an applicant whether he or she has tested positive on an AIDS-related blood **test**.

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*Legislative History all references are to the Proceedings of the .V.AXCI.*

1987 Pmc. 1 11, 19, 609, 655, 659-660 (adopted).