

**H
I
V**

and
Insurance

YOUR LEGAL RIGHTS

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This is one in a series of booklets published by the AIDS LEGAL COUNCIL OF CHICAGO. All are designed to help you understand **YOUR LEGAL RIGHTS** in Illinois. The booklets in this series are:

HIV and Confidentiality

HIV and Discrimination

HIV and Insurance

HIV and Public Benefits

HIV and Undocumented Immigrants

HIV in the Workplace

HIV: Issues for Families with Children

HIV: Issues for Youth and Young Adults

HIV: Returning to Work

HIV: Wills and Powers of Attorney

All of these booklets are free and available at:

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This guide is intended as an overview of HIV-related Illinois and federal law. As with any legal matter, it is always a good idea to consult an attorney concerning the particular circumstances of your case.

HIV AND INSURANCE

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INTRODUCTION

People may have told you that because you're HIV positive, you'll never get health insurance. This isn't necessarily true. It may be difficult to get certain types of insurance if you're HIV positive – for example, an individual health or life insurance policy. But people with HIV can and do get insurance every day. This booklet will help you understand how.

If you have more questions about insurance after you're done reading, you can call the AIDS LEGAL COUNCIL OF CHICAGO at (312) 427.8990. Someone there will be happy to speak with you.

Chapter One

APPLYING FOR INSURANCE

1) Is it better to get individual health insurance or group health insurance?

Generally speaking, if you are HIV positive, it is better to have group health insurance for several reasons:

- ◆ the premiums are likely to be lower
- ◆ the coverage will probably be better
- ◆ your rates are likely to stay relatively stable compared to an individual policy

Many people get group health insurance through their employer. But if your company doesn't offer health insurance, or if you work for yourself, you should think about other groups that you could join that offer insurance. For example, if you are a freelance writer, is there a national writer's association that offers insurance?

2) Can I get insurance from my employer?

That depends. A company is not required to offer insurance to its employees. So if your company does not offer insurance to anyone, you cannot force it to do so. But if your employer does offer insurance to all employees, then you must be offered the insurance as well. See Chapter Two for more information on getting insurance from your employer.

3) Can I call an insurance company and buy an individual health insurance policy?

Getting an individual health insurance policy is very difficult if you are HIV positive. Most insurance companies are unwilling to write a policy for someone who has HIV. If you *can* find an insurance company willing to offer you a policy, it is likely that the premiums will be very high. In other words, an individual health insurance policy may be too expensive to be worth the money you spend.

4) Is there any other individual health insurance I can get?

One important option you should know about is the **Illinois Comprehensive Health Insurance Plan**, or ICHIP. This is an insurance plan for high risk people. ICHIP provides insurance to people who can't get insurance anywhere else. The coverage is expensive, and depending on how recently you've had insurance, you may have to wait six months before ICHIP will pay for any pre-existing condition like HIV. You can reach ICHIP at 1-800-367-6410.

5) Is there any way I can get life insurance?

One of the most common ways people with HIV get life insurance is through work. If your employer offers life insurance as a benefit, then you should be able to get that policy like all the other employees.

Buying a private life insurance policy might be difficult. Almost all insurance companies refuse to sell life insurance to people with HIV. They ask your HIV status on their application forms (even the ones that advertise “just answer a few short health questions”), and if you lie and say you don't have HIV, they won't pay your beneficiary when you die. Many companies even now test people for HIV.

The other possibility is to buy one or more small “guaranteed issue” plans. These policies are available to anyone, but don't pay out anything if you die within the first two years after you buy the policy. **However, even if you can get a life**

insurance policy, it is important for you to read the policy carefully. Many policies refuse to pay death benefits if the cause of death is from a pre-existing condition. In other words, if you die from something you have when you get the policy, the insurance company won't pay your beneficiary anything after you die. Check the policy carefully for a pre-existing condition clause before you buy.

6) If I apply for private insurance, can the insurance company test me for HIV?

Yes. It is likely that if you apply for insurance on your own, the insurance company will test you for HIV. It is legal for the insurance company to do so.

7) Can the insurance company deny me a policy if my test comes back positive?

Yes. In Illinois it is legal for an insurance company to refuse to provide individual insurance to people with HIV.

8) When I apply for insurance, can the insurance company ask about my sexual orientation?

No. The insurance company can only ask you about things that are relevant to your insurability. Back in the mid 1980's, when AIDS was first identified, many insurance companies found ways to refuse insurance to gay people, for example refusing to issue policies to people who had stereotypically "gay" jobs, like florists or interior designers. Such practices are illegal in Illinois.

Chapter Two

GETTING INSURANCE AT YOUR JOB

1) Does every employer offer insurance?

No. A company may offer health insurance to its employees, but it does not have to. If you are applying for a job with a new company, it is important to ask about the availability of insurance on the job.

Also, a company does not have to offer insurance to all of its employees. Often a company offers insurance only to full-time employees.

2) Where are jobs with good health insurance?

In general, the larger the employer, the better the health insurance. This is not always true, of course, but bigger companies may be able to afford better coverage. Large employers may also be more likely to offer several plans so you don't have to be in an HMO. Most full-time government jobs have good health insurance. Most unionized employers and many not-for-profits offer good health insurance. But there are also many small companies that offer good health insurance plans, and many large ones that only offer a bare-bones HMO plan.

3) If I'm interviewing for a job, how do I find out what kind of insurance the job offers?

You probably won't make a good impression in an interview if you spend a lot of time asking about health insurance. But it's all right to ask about fringe benefits generally and when you actually get an offer, by all means ask for a detailed description of the salary and benefit package.

4) Can my company deny me coverage because I'm HIV positive?

No. If your company provides insurance to its employees, then every employee eligible for insurance must be accepted onto the policy. If you are eligible for insurance, then you cannot be denied coverage.

5) If I get insurance at a new job, will the policy pay for my HIV-related expenses?

The answer depends on the terms of your insurance policy, and whether you have other insurance when you start the job. First of all, not all insurance policies exclude coverage for pre-existing conditions. Many HMO's will pay for any condition you have, whether you had it before you got on the HMO or not. It is important for you to read your policy carefully to understand what it will and will not pay for. If the policy is too difficult for you to understand, ask someone in human resources to explain it to you. Or call the AIDS Legal Council for assistance.

But if your new insurance policy does contain a pre-existing condition exclusion, that exclusion may not apply to you, according to a law called the **Health Insurance Portability and Accountability Act (HIPAA)**. If you had insurance coverage for at least 12 months before you got your new policy, then the new policy will probably have to pay for any pre-existing condition you have. See Chapter Three for more information on this.

If your insurance policy refuses to pay for pre-existing conditions and HIPAA does not apply to you, *the policy can only refuse to pay HIV-related claims for one year*. After that, the policy must pay for HIV-related claims.

6) I'm applying for insurance through work, and the application asks if I'm HIV positive. If I say yes, I'm afraid I won't get the coverage. Isn't it better to lie?

From a legal standpoint, it is never a good idea to lie on an insurance application. If you do, and the insurance company finds out, the insurance company may have the right to cancel your policy.

7) I have to fill out an insurance form for my employer that asks me questions about my health. What do I say?

If you work for a very large company (say over 1000 employees), you should be okay, because they probably have other employees with serious health problems and their Human Relations Department probably knows the rules about keeping medical information confidential. But if you have any doubts, or you work for a smaller company, here are three ways that you might handle this.

- ◆ Put a big circle around the whole section that lists all the health conditions and write “various pre-existing conditions – full details available from my doctor” and give the doctor’s name and phone number. Sign a form at your doctor’s office that it’s okay to tell the insurance company about your HIV, but not your employer.
- ◆ Tell your employer “I know I’ll be in trouble if I leave anything out on this form so I’m just going to take it to my doctor’s office and have them fill it in. My doctor is a nut about privacy, though, and he’ll want to fax it directly to the insurance company. Could you give me their fax number?” Then, whether or not you give it to your doctor, fax the completed form to the insurance company yourself with a note that they must not share the information with your employer (which they already should know).
- ◆ Call the insurance company yourself and tell them your situation. Tell them you are going to fill out two forms – one for them with all the truthful answers, and one for your employer that leaves out your HIV and anything

else you might be worried about disclosing (for example, mental illness). Get their fax number. Then tell your employer you need an extra form because you messed up on the first one. Fax the form with the true information to the insurance company. Turn the other one in to your employer.

8) Can my employer refuse to offer me insurance because he thinks my HIV will cost him too much money?

No. If you are eligible for insurance, then you must be offered insurance like every other employee.

Chapter Three

MAINTAINING INSURANCE

- 1) I have great insurance at work, but I don't like my job very much. I would love to look for a new job, but I'm afraid I'll never be able to get insurance again. Am I stuck in this job forever?**

No. A federal law called the **Health Insurance Portability and Accountability Act (HIPAA)** makes it easier for people with HIV to get new insurance after leaving a job. Here's how it works.

Many insurance policies refuse to pay for a "pre-existing condition." This means the policy will not pay claims for any medical condition you have when you get the policy. So a lot of people with HIV worry that getting a new job with new insurance means being stuck with a pre-existing condition that the new insurance policy won't pay for.

However, HIPAA helps people with HIV who want to get new insurance. This law says that *if you had health insurance for at least 12 months in a row before getting your new policy, then the new policy must pay for any pre-existing condition.* For example, if you had insurance through an old job for two years and then you got new insurance at a new job, that new insurance has to cover your HIV just as it covers any other health problem you might have.

If you haven't had insurance for at least 12 months in a row before getting new insurance, HIPAA may still help you. The number of months that you *did* have insurance can be applied to the pre-existing condition limitation on your new policy. For example, let's say you had insurance for eight months before you got your new policy. And let's say that the new policy will not pay for any pre-existing condition for one year. You can reduce that one-year exclusion period by eight months (because you have eight months of insurance credit from your old policy). That means that your new policy can only refuse to pay for any pre-existing condition for four months. After that, the policy will have to pay for your pre-existing condition.

Of course, four months without insurance coverage for HIV-related expenses can be very costly. One way to solve this problem is to keep the old insurance from your old job while at the same time signing up for the new insurance at your new job. A federal law called **COBRA** allows many employees to keep their insurance for a while after leaving a job (see questions 2 through 6 in this chapter for more information on how COBRA works). If you can continue your old insurance through COBRA during those months when the new insurance won't pay for your HIV-related expenses, then you will never have a gap in coverage.

It's important for you to know that HIPAA will only help you *if you haven't had a gap in your insurance coverage of more than 63 days between the old coverage and the new coverage.*

Also, in order for HIPAA to help you, you will need to prove how many months you were covered on your old insurance policy. To do this, you need to get a “certificate of creditable coverage” from your old insurance company. Ask your employer how to get this certificate.

2) I have insurance through work. If I'm fired or if I quit, is there any way I can keep that insurance policy?

Yes. A federal law called **COBRA** allows most employees to continue their health insurance after they leave their job. **COBRA only applies to companies with 20 or more employees. It does not apply to religious organizations or the federal government.**

So if you work for a company that has 20 or more employees and you leave your job, you have a right to continue your health insurance. COBRA covers you whether you leave your job voluntarily, you are laid off, or you are fired. The only time COBRA doesn't cover you is if you are fired for gross misconduct.

3) What are my rights under COBRA?

COBRA says that you can continue your health insurance for at least 18 months after you leave your job. In most cases, you will have to pay the full premium.

If you are disabled according to Social Security when you elect COBRA, or if you become disabled within 60 days of electing COBRA, then you can get an 11-month extension of COBRA, so you can continue your insurance for 29 months. If you are found eligible for Social Security while you are on COBRA, you must tell your former employer immediately so that you can get the extra months of COBRA coverage. If your spouse or children are eligible for COBRA, they can continue the insurance for 36 months.

The coverage that you get must be *identical* to the coverage you had while working. COBRA gives you the right to continue your health insurance but *not* life insurance or disability insurance.

4) How do I sign up for COBRA?

If you are eligible for COBRA, your employer is required by law to offer it to you. If your employer forgets to give you a COBRA application, you could bring a lawsuit against him. However, that lawsuit might take years to get through the courts, and you wouldn't have any insurance during that time. Therefore, it is always a good idea to request a COBRA application when you're leaving your job.

5) How expensive is COBRA?

The premium for your COBRA insurance must be nearly identical to the premium paid for your coverage while you were working. COBRA says that for the first 18 months the new premium can be no more than 102% of the old premium. If, for example, your insurance premium was \$100 a month while you were working, your COBRA premium can be no more than \$102.

If you are eligible for the 11-month extension of COBRA (see question 3), then the premium can go up to 150% of the old premium during those 11 months.

In most cases, you will have to pay the full COBRA premium yourself, even if your employer paid part or all of the premium while you were working.

6) What if I can't afford the COBRA premiums?

Currently the Illinois Department of Public Health administers a program that will pay all or most of your COBRA premiums. The program is called **Continuation of Health Insurance Coverage**, or CHIC. To be eligible for CHIC, you must:

- ◆ have a disability due to HIV
- ◆ be a resident of Illinois
- ◆ have an annual income that is less than 300% of the federal poverty level (\$31,212 for a single individual in 2008)
- ◆ have no more than \$10,000 worth of personal assets

The CHIC program is run by the AIDS Activity Section of the Illinois Department of Public Health. Their phone number is 1-217-524-5983.

7) What if I work for a company that has fewer than 20 employees?

If your company has fewer than 20 full-time employees, then you are not eligible for COBRA. If, however, your company has more than 10 full-time employees, Illinois law gives you the right to continue your insurance for nine months after leaving your job. You should request an application for this insurance extension in the same way you would request COBRA.

Chapter Four

CONFIDENTIALITY AND DISCRIMINATION

1) Can my insurance company cancel my policy if they find out I'm HIV positive?

No. Testing HIV positive is not valid grounds for termination of an insurance policy.

It is very likely that when you submit your first HIV-related claim, your insurance company will investigate that claim. The insurance company will probably request your medical records, and will ask you to provide the names of all the doctors you have seen in recent years. Essentially, the insurance company is looking to see when you were diagnosed HIV positive. If it turns out that you tested HIV positive before you signed up for the insurance policy, and that you lied about your HIV status on that application, *then* the insurance company could cancel your policy.

But if the information you provided on your application is accurate, then the insurance company could not cancel your policy just because it found out you're HIV positive.

2) I have insurance through work. If I submit an HIV claim to my insurer, will my employer find out I'm HIV positive?

Your employer should not find out about your HIV status. A federal law called HIPAA prohibits an insurance company from disclosing confidential information to your employer. However, the insurance company will probably disclose the claims history to your employer. This means your employer will be told what types of health conditions people have who are insured under the group policy –

without being told who those specific people are. So if you work for a small company, and your employer finds out that one person on the group health insurance plan has HIV, your employer may guess who that person is.

3) Can my insurance company get my medical records?

Yes. If you have a policy with an insurance company, they have a right to review your medical records. If you refuse to provide those records, the insurance company might have a right to cancel your policy.

