

# **Insurance Coverage**

**and**

**AIDS**



**State of Wisconsin  
Office of the Commissioner of Insurance  
P.O. Box 7873  
OCI's World Wide Web Home Page:  
[oci.wi.gov](http://oci.wi.gov)**

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**The mission of the Office of the Commissioner of Insurance . . .**  
**Leading the way in informing and protecting the public**  
**and responding to their insurance needs.**

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If you have a specific complaint about your insurance, refer it first to the insurance company or agent involved. If you do not receive satisfactory answers, contact the Office of the Commissioner of Insurance (OCI).

For information on how to file insurance complaints call:

(608) 266-0103 (In Madison)  
or  
1-800-236-8517 (Statewide)

Mailing Address  
Office of the Commissioner of Insurance  
P.O. Box 7873  
Madison, WI 53707-7873

Electronic Mail  
ocicomplaints@wisconsin.gov  
Please indicate your name, phone number, and e-mail address.

OCI's World Wide Web Home Page  
oci.wi.gov

For your convenience, a copy of OCI's complaint form is available on OCI's Web site. You can print it, complete it, and return it to the above mailing address. Copies of OCI publications are also available online on OCI's Web site.

**Deaf, hearing, or speech impaired callers may  
reach OCI through WI TRS**

This guide is not a legal analysis of your rights under any insurance policy or government program. Your insurance policy, program rules, Wisconsin law, federal law, and court decisions establish your rights. You may want to consult an attorney for legal guidance about your specific rights.

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This booklet provides basic information regarding the insurance statutes and regulations that apply to insurance coverage for the human immunodeficiency virus (HIV) that causes acquired immunodeficiency syndrome (AIDS). For more detailed and complete information you may want to contact one of the AIDS service organizations listed on the Resources pages at the back of this booklet.

### **May insurers ask you if you have AIDS or ARC?**

Insurers may ask on the application for any type of accident and health or life insurance coverage if you have ever been diagnosed by a member of the medical profession or treated for AIDS (acquired immunodeficiency syndrome) or ARC (AIDS-related complex).

### **May insurers ask you if you have been tested for AIDS, ARC, or the HIV virus?**

If you are applying for **individual** accident and health or life insurance, the insurer may:

- Ask you if you have been tested for AIDS, ARC, or the HIV virus and for the results of those tests.
- Require that you be tested, at the insurer's expense, for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV.

**For individual health or life insurance applications that include a question about previous tests, an insurer may not require or request the disclosure of any information as to whether you have been tested at an anonymous counseling and testing site in Wisconsin or another state, or through the use of an anonymous home test kit, or to reveal the results of such a test.**

If you apply for coverage under a **group** accident and health or life insurance policy that is subject to Wisconsin law, the insurer may **not**:

- Ask you any questions concerning whether you have been tested for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV as part of the underwriting process or what the results of the test were;
- Condition the provision of insurance coverage on whether you have obtained a test for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV, or what the results of this test were; or
- Consider in the determination of rates or any other aspect of insurance coverage provided to you whether you have obtained a test for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV, or what the results of this test were.

The provisions listed above apply both to group health and life insurance policies where prospective applicants are individually medically underwritten and where there is no individual underwriting, such as in guarantee issue situations.

### **What AIDS/HIV tests may insurers ask you about or require you to take?**

Insurers may ask you about or require you to take only tests that the state epidemiologist finds are "medically significant and sufficiently reliable to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV." Insurers may ask you about or require you to take only tests that meet the following criteria:

- A single specimen that is repeatedly reactive using any Food and Drug Administration (FDA)-licensed enzyme immunoassay (EIA) HIV antibody test and confirmed positive using an FDA-licensed HIV antibody confirmatory test.
- A single specimen that is repeatedly reactive using any FDA-licensed HIV antigen test and an FDA-licensed EIA HIV antibody test. A specimen which is repeatedly reactive to an FDA-licensed HIV antigen test shall be confirmed through a neutralization assay. A specimen which is repeatedly reactive to an FDA-licensed EIA HIV antibody test shall be tested with an FDA-licensed HIV antibody confirmatory test.
- A single specimen that is tested for the presence of HIV using a molecular amplification method for the detection of HIV nucleic acids consistent with National Committee for Clinical Laboratory Standards.
- A single specimen that is tested for the presence of HIV using viral culture methods.

### **Does the insurer have to obtain informed consent before testing?**

Yes. The insurer must obtain prior to testing a signed consent form from you or from one of the following:

- The person's parent or guardian, if the person is under 14 years of age; or
- The person's guardian, if the person is adjudged incompetent under ch. 880, Wis. Stat.; or
- The person's health care agent, as defined in s. 155.01 (4), Wis. Stat., if the person has been found to be incapacitated under s. 155.05 (2), Wis. Stat.

The insurer must provide a copy of the consent form to the person who signed the form and must maintain a copy of the consent form for at least one year. A sample format of the consent form is included at the back of this booklet.

The insurer must provide, with the consent form, a copy of the document, "Resources for Persons with a Positive HIV Test/The Implications of Testing Positive for HIV." This document (OCI 17-001) is included in the back of this booklet.

### **Is the insurance company permitted to disclose the results of a test to anyone?**

If you are required by the insurer to be tested, the test results described in the consent form signed prior to the testing may be released only as described in the consent form, or upon your written consent, or that of a person authorized to give consent.

### **Are there other insurance laws that pertain to HIV testing?**

Yes. If an insurer medically underwrites your application for group accident and health insurance or group life insurance, the insurer may not use or obtain from any source, including the Medical Information Bureau, Inc., information regarding the following:

- The results of your test for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV; or
- Any other information on whether you have been tested for the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV.

An **accident and health insurance policy** may not contain exclusions or limitations, including deductibles or copayments, for coverage of the treatment of HIV infection or any illness or medical condition arising from or related to HIV infection, unless the exclusions or limitations apply generally to other illnesses or medical conditions covered by the policy.

A **life insurance policy** may not deny or limit benefits solely because death is caused, directly or indirectly, by HIV infection or any illness or medical condition arising from or related to HIV infection.

Every **accident and health insurance** policy issued or renewed on or after April 28, 1990, that provides prescription drug coverage must provide coverage for drugs that:

- Are prescribed by your physician for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection; and
- Are approved by the federal Food and Drug Administration for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection, including each investigational new drug approved under 21CFR 312.34 to 312.36 for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection and that is in, or has completed, a phase 3 clinical investigation performed in accordance with 21CFR 312.20 to 312.33; and
- Are defined as "investigational new drugs," if they are prescribed and administered in accordance with the treatment protocol approved for "investigational new drugs."

Coverage of these drugs may be subject to any copayments and deductibles that the insurance policy applies to other prescription medication covered by the policy. This coverage does not apply to specified disease policies, policies offered by limited service health organizations (LSHOs), or Medicare supplement or replacement policies.

Any individual who submits evidence that he or she has tested positive for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is eligible to enroll in the Wisconsin Health Insurance Risk Sharing Plan (HIRSP). Information on HIRSP may be obtained by contacting:

**HIRSP Customer Service**  
**1751 West Broadway**  
**P.O. Box 8961**  
**Madison, Wisconsin 53708-8961**  
**(608) 221-4551 (In Madison)**  
**1-800-828-4777 (Statewide)**  
**Fax (608) 226-8770**  
**www.hirsp.org**  
**E-mail: HIRSPweb@wpsi.com**

### **What are the insurer's obligations if a test is positive?**

If a test is positive and affects the issuance or terms of the policy, the insurer must provide written notice to you or the person who signed the consent form on your behalf that you do not meet the insurer's usual underwriting criteria because of a test result. The insurer must request that you provide informed consent for disclosure of the test result to a health care provider with whom you choose to discuss the test result.

Upon receipt of the informed consent for disclosure, the insurer must provide your designated health care provider with the test result. If you refuse to give informed consent for disclosure, the insurer must, upon your request, provide you or the person who signed the consent form on your behalf with the test result.

The insurer must include with the report of the test result all of the following:

- A statement that you should contact a private health care provider, a public health clinic, an AIDS service organization, or the Wisconsin HIV/STD/Hepatitis C Information and Referral Center (IRC) for information on the medical implications of a positive test, the desirability of further independent testing, and the availability of anonymous testing; and
- The toll-free telephone number of the Wisconsin IRC, the statewide AIDS information and medical referral service; and
- A copy of the document "Resources for Persons With a Positive HIV Test/The Implications of Testing Positive for HIV."

The Wisconsin Department of Health Services (DHS) has two programs that help persons with HIV infection. The Wisconsin AIDS/HIV Drug Assistance Program (ADAP) and the Wisconsin AIDS/HIV Health Insurance Premium Subsidy Program can help Wisconsin residents with HIV infection obtain certain HIV drugs and maintain (or obtain) health insurance. To apply for ADAP and/or the Insurance Premium Subsidy Program or to learn more about these programs, call DHS toll-free at 1-800-991-5532.