

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 31.
INSURANCE AND SECURITIES.

CHAPTER 16.
PROHIBITION OF DISCRIMINATION IN THE
PROVISION OF INSURANCE ON BASIS OF AIDS
TEST.

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CHAPTER 16. PROHIBITION OF DISCRIMINATION IN THE PROVISION OF INSURANCE ON BASIS OF AIDS TEST.

§ 31-1601. DEFINITIONS.

For the purposes of this chapter, 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.
- (3A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).
- (4) "Health maintenance organization" or "HMO" means any person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollees responsibility for co-payments and deductibles, and qualifies as a health maintenance organization under Chapter 34 of Title 31.
- (5) "HIV" means human immunodeficiency virus.
- (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.

(Aug. 7, 1986, D.C. Law 6-132, § 2, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(a), 36 DCR 471; June 18, 2003, D.C. Law 14-312, § 301, 50 DCR 306; June 25, 2008, D.C. Law 17-177, § 15(a), 55 DCR 3696.)

§ 31-1602. APPLICATION OF CHAPTER.

The requirements of this chapter 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.

(Aug. 7, 1986, D.C. Law 6-132, § 3, 33 DCR 3615.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-222.

Legislative History of Laws

For legislative history of D.C. Law 6-132, see Historical and Statutory Notes following § 31-1601.

§ 31-1603. PROHIBITED ACTIONS.

- (a) Repealed.

(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, gender identity or expression, 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, gender identity or expression, 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, 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.

(Aug. 7, 1986, D.C. Law 6-132, § 4, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(b), 36 DCR 471; June 25, 2008, D.C. Law 17-177, § 15(b), 55 DCR 3696.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-223.

Effect of Amendments

D.C. Law 17-177, in subsec. (b), substituted "sexual orientation, gender identity or expression" for "sexual orientation".

Legislative History of Laws

For legislative history of D.C. Law 6-132, see Historical and Statutory Notes following § 31-1601.

For legislative history of D.C. Law 7-208, see Historical and Statutory Notes following § 31-1610.

For Law 17-177, see notes following § 31-1601.

§ 31-1604. 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 Commissioner of Insurance and Securities 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 Commissioner of Insurance and Securities determines that the result of the test of the proposed insured is not a true positive, the Commissioner of Insurance and Securities shall order the insurer from which the applicant sought coverage to disregard the positive test result. The Commissioner of Insurance and Securities 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 5 of Title 2.

(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.

(Aug. 7, 1986, D.C. Law 6-132, § 5, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(c), 36 DCR 471; May 21, 1997, D.C. Law 11-268, § 10(g), 44 DCR 1730.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-224.

Legislative History of Laws

For legislative history of D.C. Law 6-132, see Historical and Statutory Notes following § 31-1601.

For legislative history of D.C. Law 7-208, see Historical and Statutory Notes following § 31-1610.

For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 31-2501.03.

Miscellaneous Notes

Department of Insurance abolished: See Historical and Statutory Notes following § 31-2501.03.

§ 31-1605. DIAGNOSIS OF AIDS.

(a) Nothing in this chapter 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) 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.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-225.

Legislative History of Laws

For legislative history of D.C. Law 6-132, see Historical and Statutory Notes following § 31-1601.

For legislative history of D.C. Law 7-208, see Historical and Statutory Notes following § 31-1610.

§ 31-1606. INFORMED CONSENT REQUIREMENTS; RESTRICTIONS ON DISCLOSURE.

(a) No insurer shall request or require a proposed insured to take the testing protocol certified pursuant to § 31-1604 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 Commissioner of Insurance and Securities.

(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 Commissioner of Insurance and Securities, an explanation of the meaning of test results, and a description of the disclosure restrictions established by this chapter.

(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 Commissioner of Insurance and Securities 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 Commissioner of Insurance and Securities.

(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.

(Aug. 7, 1986, D.C. Law 6-132, § 7, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(e), 36 DCR 471; Feb. 5, 1994, D.C. Law 10-68, § 30, 40 DCR 6311; May 21, 1997, D.C. Law 11-268, § 10(g), 44 DCR 1730.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-226.

Legislative History of Laws

For legislative history of D.C. Law 6-132, see Historical and Statutory Notes following § 31-1601.

For legislative history of D.C. Law 7-208, see Historical and Statutory Notes following § 31-1610.

Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 31-2501.03.

§ 31-1607. 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 chapter, 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.

(Aug. 7, 1986, D.C. Law 6-132, § 8, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(f), 36 DCR 471.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-227.

Legislative History of Laws

For legislative history of D.C. Law 6-132, see Historical and Statutory Notes following § 31-1601.

For legislative history of D.C. Law 7-208, see Historical and Statutory Notes following § 31-1610.

§ 31-1608. SPECIAL ENFORCEMENT PROVISIONS.

(a) An insurer, or an agent, broker or employee of the insurer who violates any provision of this chapter or rule issued pursuant to this chapter 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 §§ 31-2502.03, 31-2502.36, 31-4305, and 31-4326, or other applicable District laws.

(b) Any person who violates the restrictions on disclosure in § 31-1606(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 chapter, or a rule issued pursuant to this chapter, 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.

(Aug. 7, 1986, D.C. Law 6-132, § 9, 33 DCR 3615; Mar. 16, 1989, D.C. Law 7-208, § 2(g), 36 DCR 471.)

§ 31-1609. RULES.

The Mayor shall issue proposed rules, within 90 days of August 7, 1986, to implement the provisions of this chapter. 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.

(Aug. 7, 1986, D.C. Law 6-132, § 10, 33 DCR 3615.)

§ 31-1610. PROHIBITION AGAINST DISCRIMINATION IN USE OF AIDS TESTS.

(a) No insurer shall inquire about the sexual orientation or gender identity or expression 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 or gender identity or expression, 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 or gender identity or expression of a proposed insured.

(d) An insurance company shall not use sexual orientation, gender identity or expression, lifestyle, living arrangements, occupation, gender, or beneficiary designation to determine whether to test an individual who applies for life, health, or disability income insurance.

(Aug. 7, 1986, D.C. Law 6-132, § 11, as added Mar. 16, 1989, D.C. Law 7-208, § 2(h), 36 DCR 471; June 25, 2008, D.C. Law 17-177, § 15(c), 55 DCR 3696.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-230.

Effect of Amendments

D.C. Law 17-177, in subsecs. (a) and (c), substituted "sexual orientation or gender identity or expression" for "sexual orientation"; in subsec. (b), substituted "Sexual orientation or gender identity or expression, shall not" for "Sexual orientation shall not"; and, in subsec. (d), substituted "sexual orientation, gender identity or expression" for "sexual orientation".

Legislative History of Laws

Law 7-208, the "Prohibition of Discrimination in the Provision of Insurance Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-364, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-279 and transmitted to both Houses of Congress for its review.

For Law 17-177, see notes following § 31-1601.