

AIDS, insurance and you

Persons who test positive for the HIV antibody are becoming "uninsurables" and the insurance industry is quite upfront in acknowledging that such a class of people will not be able to get insurance.

BY BEN MERRILL

AIDS: The Legal Complexities of a National Crisis," a seminar sponsored by the Association of the Bar of the City of New York and the Law Journal Seminar's Press brought together, for the second consecutive year, governmental and private sector lawyers to discuss AIDS issues facing medical, legal, insurance, and governmental groups.

Dr. Michael H. Grieco, Chief of the Division of Infectious Disease and Clinical Immunology at St. Luke's/Roosevelt Hospital Center in New York City, opened the seminar with an update on the epidemiology and demographics of the disease, as well as the availability of treatments and the likelihood of a vaccine and a cure in the near future.

After the medical background update, the seminar turned to a discussion of the legal obligations of medical personnel, the permissible scope of government regulators under the so-called "state police power" to quarantine and isolate, insurance industry issues, employment discrimination, and special legal problems faced by persons with AIDS.

Evidence presented during the two day seminar indicated that the major issue of 1987 is insurance. The insurance industry was represented by Russell P. Iuculano, Legislative Director, American Council of Life Insurance, and Rita M. Thiesen; Leboueuf, Lamd, Lieby, and MacRae, an insurance defense attorney. Ms. Thiesen used an impressive array of statistics to try and dispel what she described as "horror stories" about persons with AIDS losing their insurance. For example, concentrating on health insurance, Ms. Thiesen pointed out that 51% of the working class is covered with medical insurance through their employers, and that 172 million Americans under 65 have health care coverage (95% is through group insurance). Ms. Thiesen also argued that claims filed through such group coverage are being paid.

However, as Ms. Thiesen did not say, claims are paid only as long as persons with AIDS continue to be employed. Once employment ceases, there is a period where group coverage continues for a short time, and then, of course, the employee must exercise a "right of conversion." Although employees once covered by group insurance have a right to convert, policies usually are cancellable by the insurance company after a period of time, depending upon state regulation. The argument is made by the industry that certain classes of persons are already denied insurance: Namely diabetics, those with generic congenital defects, high blood pressure and heart attack persons. They argue that persons with AIDS should be treated no differently. This hypothesis leads them to demand access to HIV test results and, even further, may lead to the requirement of testing before determining insurability.

To date, the industry has been dealing

only with persons with AIDS. However, Iuculano went on to note that under CDC definitions of AIDS, persons proving HIV positive, had to be looked at as both *infected*, and *infectious*. Iuculano further argued that the insurance companies need not wait for the manifestation of an opportunistic infection before finding that a person proved to be too high an insurable risk.

Citing the statistic that the estates of most persons who die from AIDS make life insurance claims within three years of the issuance of policies, the industry argues that large-scale insurance fraud is being perpetrated by those applying for such policies. The industry argues that low risk persons will not continue to pay premiums of an escalating cost due to high risk persons who make claims which are then paid.

In effect, persons with HIV positive are becoming "uninsurables" and the industry, while supporting pooling agreements, is quite upfront in acknowledging that such a class of people will not be able to get insurance and will not be able to afford higher costs of pooled policy underwriting.

Iuculano was even harsher in taking the position for the industry that "AIDS should not be given favored status." Until AIDS, Iuculano argued, the right by the industry to test was not questioned outside the industry.

Again, citing CDC and NIH statistics, Iuculano made an impressive argument that the HIV test was an increasingly accurate predictor of future development of health care problems in the identified populations. For example, the statistics indicate that in late 1985 the Center for Disease Control said that 5-19% of persons testing HIV positive would go on to develop frank AIDS. By October 29, 1986, the Institutes of Medicine made a bold statement that 50% of those so testing would go on to develop AIDS. In light of such compelling statistics, the battle is not to be waged on whether or not the statistics are flawed, but rather what role society should play, and whether or not insurability is going to be a guarantee extended to a much larger population.

Of all the other topics presented, the most interesting was whether or not high risk communities could look forward to any serious movement by governmental agencies to exercise police powers in the direction of isolation and quarantine. On this front, there was much more general consensus by all concerned that quarantining would eventually be ruled unconstitutional if attempted and that isolation would simply not work given the long incubation periods of the disease.

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