

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

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Form #5

WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY: West Virginia Code Sections 33-2-10 and 16-3C-2(j)

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE \_\_\_\_\_

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW  
\_\_\_\_\_

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_  
\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 27A

TITLE OF RULE BEING PROPOSED: AIDS Regulations  
\_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS September 1, 2002

  
\_\_\_\_\_  
Authorized Signature

**SCANNED**

**114CSR27A  
INTERPRETIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 27A  
AIDS REGULATIONS**

Section

- 114-27A-1. General.
- 114-27A-2. Interpretive Note.
- 114-27A-3. Allowance of FDA Approved Urine HIV Tests.
- 114-27A-4. Compliance with Protocol Established in Interpretive Rule.
- 114-27A-5. Sunset Date.

**114CSR27A  
INTERPRETIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 27A  
AIDS REGULATIONS**

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COMMONWEALTH OF VIRGINIA  
SECRETARY OF STATE

**§114-27A -1. General.**

1.1. Scope. -- Series 27 of the Insurance Commissioner's rules, 114CSR27, establishes the standards for AIDS related underwriting health and lifestyle questions and AIDS testing in connection with applications for life or health insurance policies. This interpretive rule sets forth an additional protocol which the underwriter and the proposed insured may agree to use in lieu of the protocol established in 114CSR27, §5. This additional protocol allows the use of urine specimens as the exclusive method for HIV testing in connection with applications for life or health insurance policies, as an alternative to the use of blood or oral specimens.

1.2. Authority. -- W. Va. Code §§33-2-10 and 16-3C-2(j).

1.3. Filing Date. -- September 1, 2002.

1.4. Effective Date. -- September 1, 2002.

**§114-27A-2. Interpretive Note.**

2.1. Technology has advanced in recent years with regard to HIV testing, and since promulgation of the AIDS Regulation, 114CSR27 §1, et seq., the U.S. Food and Drug Administration has approved the use of urine specimens to determine the presence of HIV. This interpretive rule shall be read in pari materia with the AIDS Regulations (114CSR27, §1, et seq.) previously promulgated by the Insurance Commissioner pursuant to authority granted by the Legislature in W.Va. Code §§33-2-35 and 16-3C-2(j). The definitions, applicability provisions and all other provisions provided in 114CSR27, §1, et seq. are equally applicable to this interpretive rule, with the exception of the provisions in 114CSR27, subsections 5.9 and 5.10, to the extent they are inconsistent with this interpretive rule. Appendix B and Appendix C to 114CSR27 are also applicable to this interpretive rule. Appendix A, attached hereto, has been modified slightly to reflect that any abnormalities, not just blood abnormalities, will adversely affect an application for insurance, consistent with the allowance of an alternative testing protocol to blood tests as set forth in this interpretive rule.

**§114-27A-3. Allowance of FDA Approved Urine HIV Tests.**

3.1. Any HIV Testing that is authorized by section 5 of the AIDS Regulations, 114CSR27, §5, or this rule, is required to be administered on a nondiscriminatory basis for all individuals in the same underwriting class. No proposed insured may be denied coverage or rated a substandard risk on the basis of HIV testing unless an acceptable testing protocol is

followed, including the use of FDA-licensed tests. In lieu of the HIV protocol established in 114CSR27, §5, the Insurance Commissioner will allow underwriters and a proposed insured to agree to use the following protocol:

- a. An initial enzyme linked immunosorbent assay (ELISA) test is administered to the proposed insured, and it indicates the presence of HIV antibodies; and
- b. A second ELISA test is administered and it indicates the presence of HIV antibodies; and
- c. A Western Blot test is conducted and it confirms the results of the two ELISA tests.

3.2. If any of the tests in the ELISA-ELISA-Western Blot series produce a negative result, the testing ceases and the proposed insured cannot be denied coverage based on AIDS-related testing.

For Example: If the initial ELISA test yields a negative result, the testing ceases. If the initial ELISA test yields a positive result and the subsequent ELISA test yields a negative result, the testing ceases. If both ELISA tests yield a positive result and the Western Blot test yields a negative result, for purposes of insurability, the results are negative.

#### **§114-27A-4. Compliance with Protocol established in Interpretive Rule.**

An underwriter who follows the protocol established in section 3 of this interpretive rule will not be found by the Insurance Commissioner to be in violation of legislative rule 114CSR27, §5 for not following the protocol established in section 5 of that rule.

#### **§114-27A-5. Sunset Date.**

The Insurance Commissioner has proposed an amendment to legislative rule 114CSR27 that replaces the existing HIV protocol in section 5 with the protocol in section 3 of this interpretive rule, and makes a minor change to Appendix A to the rule. This interpretive rule shall terminate and be of no further effect on the day the Insurance Commissioner's proposed amended legislative rule, 114CRS27, takes effect following its authorization by the Legislature.

**APPENDIX A**

Examiner \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

Insured \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_

**NOTICE AND CONSENT FOR BLOOD, URINE, OR ORAL FLUID TESTING  
WHICH MAY INCLUDE AIDS VIRUS (HIV) ANTIBODY/ANTIGEN TESTING**

To determine your insurability, the insurer named above (the Insurer) has requested that you provide a sample of your blood, urine, or oral fluids for testing and analysis. All tests will be performed by a licensed laboratory.

Tests may be performed to determine the presence of antibodies or antigens to the Human Immunodeficiency Virus (HIV), also known as the AIDS Virus. The HIV antibody test that we perform is actually a series of tests done by a medically accepted procedure. The HIV antigen test directly identifies AIDS viral particles. This series of tests is extremely reliable. Other tests which may be performed include determinations of blood cholesterol and related lipids (fats) and screening for liver or kidney disorders, diabetes, and immune disorders.

All test results will be treated confidentially. They will be reported by the laboratory to the Insurer. When necessary for business reasons in connection with insurance you have or have applied for with the Insurer, the Insurer may disclose test results to others such as its reinsurers, employees, or contractors. If the Insurer is a member of the Medical Information Bureau (MIB, Inc.), and if the test results for HIV antibodies/antigens are other than normal, the Insurer will report to the MIB, Inc. a generic code which signifies only a non-specific test abnormality. If your HIV test is normal, no report will be made about it to the MIB, Inc. Other test results may be reported to the MIB, Inc. in a more specific manner. The organizations described in this paragraph may maintain the test results in a file or data bank. There will be no other disclosure of test results or even that the tests have been done except as may be required or permitted by law or as authorized by you. If you desire, you have the right to request a complete list of the parties to whom the insurer has released test information.

## APPENDIX A

You should also be aware that the person who performs the blood, urine or oral fluid testing is subject to W. Va. Code §§16-3C-3 and 16-3C-4 which authorize that they may disclose test results to certain limited individuals under certain limited circumstances [these relate primarily to (1) persons you authorize to see the test results, (2) health care providers who may come into contact with you or specimens obtained from you, (3) the United States centers for disease control, (4) a court order to release the results, and (5) identified sex partners and persons sharing needles.] These persons are required by W. Va. Code §§16-3C-3 and 16-3C-4 to keep test information confidential.

You may direct that test results be disclosed directly to you or if you prefer to your personal physician or other health care professional. It is strongly suggested that you designate a physician or health care professional to receive your test results so that they may properly explain the results to you.

If your HIV test results are normal, no routine notification will be sent to you. If the HIV test results are other than normal, the Insurer will contact you. The Insurer may also contact you if there are other abnormal test results which, in the Insurer's opinion, are significant. If you have not already indicated one, the Insurer may ask you at that time for the name of a physician or other health care provider to whom you may authorize disclosure and with whom you may wish to discuss the results.

Positive HIV antibody/antigen test results do not mean that you have AIDS, but that you are at significantly increased risk of developing AIDS or AIDS-related conditions. Federal authorities say that persons who are HIV antibody/antigen positive should be considered infected with the AIDS virus and capable of infecting others.

Positive HIV antibody or antigen test results or other significant abnormalities will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary.

**APPENDIX A**

I wish my test results to be released to:

(Check Please)

\_\_\_\_\_ Myself only.

\_\_\_\_\_ My physician, health care provider, or other person indicated below.

\_\_\_\_\_ Both myself and my physician, health care provider or other person indicated below.

Physician, Health Care Provider, or other person.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

I have read and I understand this Notice and Consent For Blood, Urine or Oral Fluid Testing Which May Include AIDS Virus HIV Antibody/Antigen Testing. I voluntarily consent to give a urine or oral fluid specimen and/or to the withdrawal of blood from me, the testing of that urine and/or blood or oral fluid, and the disclosure of the test results as described.

I understand that I have the right to request and receive a copy of this authorization. A photocopy of this form will be as valid as the original.

\_\_\_\_\_  
Proposed Insured

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Signature of Proposed Insured  
or Parent/Guardian

\_\_\_\_\_  
Date

\_\_\_\_\_  
State of Residence

**THIS AUTHORIZATION EXPIRES AFTER 60 DAYS**



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE  
Governor

JANE L. CLINE  
Insurance Commissioner

August 2, 2002

HAND DELIVERED

Ms. Judy Cooper, Director  
Administrative Law Division  
Office of Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Ms. Cooper:

Please find herewith, one (1) copy of the following for filing:

- 1) Notice of Agency Adoption of a Procedural or Interpretive Rule and Consent of Cabinet Secretary of Tax and Revenue;
- 2) Agency adopted interpretive rule entitled "AIDS Regulations" (Title 114, Series 27A).
- 3) Computer disc containing the above rule in Word Perfect 8.0 format.

Please contact me if further information is required.

Sincerely,

A handwritten signature in black ink that reads "Jane L. Cline".

Jane L. Cline  
Insurance Commissioner

JLC/jz  
Attachments