

AIDS: Facts and Fears

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monster waiting to take their lives. Accurate information is essential, however. After all, these same children are only exposed to fear now, but in five to ten years, their sexual habits may expose them to the virus.

Homophobia

Because AIDS has affected gay men predominantly, fears of homosexuality and fears of contagion are often intertwined. Homophobia is evident in the AIDS issue in the refusal to shake hands with gays, to be served by a gay waiter, to visit a gay doctor. Homophobia has also served to confuse the issues of disease and gay rights.

Many family members of persons who have AIDS also report negative responses from friends, religious organizations, neighbors and other groups that would normally provide sources of support. For both the person with AIDS and their family, public disapproval, fear and social stigma further complicate the usual issues surrounding diagnosis with a terminal illness.

"... fears of homosexuality and fears of contagion are often intertwined."

Family members often experience very painful feelings of anger, guilt and fear. They may also feel very isolated and alone because of extreme fear of AIDS in their communities, the lack of a clear understanding of its transmission and superstition. (Even the lepers of the past were provided with some shelter and support.) Those of us who believed that technological advances, education and sophistication would protect us from the superstitions of our predecessors have seen this belief evaporate in the face of a prejudice that AIDS is a curse, a punishment visited on the many for the sins of a few. So, a father holds up under the death of his only son because of his notion that the death of that son was God's punishment for the sins of the father or some other ancestor. And, families of people with AIDS are asked

to find another church, to move from their apartments, not to touch their sister or brother or son or daughter.

One of the most damaging effects of homophobia in the AIDS crisis is the smugness it engenders in us. As long as people continue to believe that all males with AIDS must be promiscuous gays and all females with AIDS must be prostitutes, we feel we will not be affected. If we can pretend AIDS and safer sex practices apply only to others, we don't have to look at our own behaviors and can continue to gamble with our lives.

Productive fear

Please don't misunderstand; AIDS is frightening. But, there are two kinds of fear: one is productive, the other counterproductive. One is a reasonable fear among people whose behavior puts them at risk for AIDS. This fear may motivate us all to change the behaviors that put us at risk for AIDS, as well as other sexually transmitted and bloodborne diseases.

However, the other fear: the fear of friends, family and coworkers, is counterproductive. This is the fear we need to do away with. This can only be accomplished through education. Accurate information for caregivers, families, people with AIDS and the general public is the single most important element used to destroy counterproductive fear.

While researchers battle to find a treatment and cure for AIDS, it is incumbent upon us to use the available treatment and cure for AFRAIDS: education and compassion. It is my naive desire that future history books will look back on us in this era of crisis and marvel at the depth of our compassion and love. The sharing of information and age-old values just might help release us all from this epidemic of fear and prejudice.

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Forum

YES

Richard Siminis

Insurance companies should have all the necessary information to properly set rates for each applicant, or the economics of insurance could be lost forever. Insurance underwriting is an objective process of determining whether the applicant meets certain criteria to be worthy of the rates which the insurance company has established. The rates are developed through the use of mortality tables (for life insurance) or morbidity tables (for health insurance) coupled with expense and yield factors. Then, through proper underwriting, it is determined whether the applicant falls within the accept-

NO

Theodore M. Knapp

Since the technology has become available to perform the HIV (Human immunodeficiency virus) (1) antibody test to screen blood donations, numerous groups have attempted to use the test for purposes other than those for which it was developed. This test, known as ELISA, detects the presence of antibodies to the AIDS (acquired immune deficiency syndrome) virus in a person's blood. It is *not* a test for AIDS; it does not predict whether an individual will ever develop any symptoms or will ever be diagnosed with AIDS-related complex (ARC) or AIDS itself. Furthermore, positive test results do not indicate the presence of the AIDS virus in the individual tested. A negative ELISA result indicates that there is a 99% probability that one has *not* been exposed to the virus; a positive result indicates a 90% probability that one has been exposed to the virus and one's system has developed antibodies. Despite the fact that ELISA-HIV test is not a diagnostic

Should AIDS testing be a requirement to obtain insurance?

able range for the rate structure. Without this process, it would be guesswork as to what should be charged for an insurance benefit. It

"For years insurance companies have asked applicants for medical history."

would also be difficult to determine whether the insurance company would profit or would lose money.

Insurance companies pay out millions of dollars per year and generally do a service for society; however, they should not be mistaken for benevolent organizations. Even providers known

as non-profit associations have come to realize that they cannot operate successfully without reserves. These reserves or profits serve as a shock absorber and give assurance that the coverage will be there for those who purchased the coverage within normal underwriting guidelines.

For years insurance companies have asked applicants for medical history which might indicate high blood pressure, cancer or diabetes. If the applicant answers affirmatively, the company may request further testing. A similar procedure needs to be followed for AIDS.

Insurance is basically a unilateral agreement. Once in force, barring any pre-existing condition clause or fraudulent statements to qualify, the insurance company provides the coverage within the conditions of the policy, so

long as the premiums are paid. Individuals with health insurance who develop AIDS are not at risk for losing their insurance coverage. But to the question "Should AIDS testing be a requirement to obtain insurance?" the answer must be, "Yes."

Certainly, there is no simple solution to the payment of medical treatment for people with AIDS who are not insured. But certainly to create an imbalance in sound insurance underwriting practices would be quite costly to the general public.

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tool, insurance underwriters and their companies have attempted to apply the test "to guard against adverse selection and provide balance to the pricing structure." To many, this is an improper use of the ELISA test and raises grave issues of public insurance and health policy. It should concern all of us on human rights and civil liberties grounds.

The insurance industry continues to have extensive press coverage centered on their spiraling malpractice premiums and on associated state legislation aimed at tort reform and underwriting practices. The debate goes on regarding the increasingly complex relationships among the insurance industry, the federal and state governments, citizens at large, organized medical and bar associations, and consumer advocate groups. Into this complex mix has entered a new and expensive disease of epidemic proportions: AIDS. Several insurance companies have paid from \$1,000 to \$500,000 per case (average \$65,000) in accordance with their policy to cover medical expenses for their policyholders who have contracted

AIDS. Seventy to eighty percent of reported cases have been covered by Medicare and Medicaid. (Total costs for treatment of one person with AIDS from diagnosis to death is estimated to be \$150,000).

The astute business-minded insurance industry has begun to consider a variety of changes aimed at cutting what they consider losses. For the most part, they are tentative about changing practices. After all, even in this era of deregulation, insurance companies are constrained by law, and most feel some responsibility not

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to unduly invade the privacy of new policy applicants. However, the actuarial tables used by insurers to set life

and other insurance premiums are suspected of being inaccurate for those individuals at high risk for AIDS.

The Washington D.C. City Council recently passed a law prohibiting insurers from using laboratory tests, such as the H.I.V. assay, for 5 years; i.e., until sound actuarial data is available. Until that time, insurers are prohibited from "redlining." In addition, any testing which occurs must have the informed consent of the applicant. On August 1, 1986, the Senate voted to override the legislation. A parallel House bill failed, and a conference committee will make the final determination.

As citizens, we band together to share our resources through taxation so that we and our fellow citizens might mutually benefit from services which can best be rendered on a group basis. As life and health insurance policy holders, we share in a group lottery: we are each betting, and paying substantial premiums, that our neighbors, the other policy holders in the group, will die or get sick rather than ourselves. Those persons who

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AIDS and Handicap Discrimination Laws

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sion made on the basis of fear of contagion (rather than because of a person's impairment) is **not** discriminatory, whether or not the person has AIDS, ARC, antibody positivity, or is merely perceived to have such conditions.(5)

One surprising aspect of the DOJ interpretation is that it defines handicap in such a way as to exclude the otherwise healthy carrier of a virus. This DOJ AIDS memo contends that an otherwise healthy carrier does not have a mental or physical impairment substantially limiting one or more major life activities. The Department refuses to recognize the ability to transmit the virus of the increased potential for developing AIDS as an impairment. For instance, the memo does not address the fact that any carrier of a virus such as AIDS must substantially limit sexual conduct, a major life activity, if he or she has any sense of personal or social responsibility.

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require insurance reimbursement for treatment of AIDS can receive, as policy holders, some of the pool reserved for sick people. Can we not, as citizens, join with insurers and employers in acknowledging that we have social and ethical obligations as well as economic boundaries? At best, out of our uncertainties and fears can emerge understanding and compassion to create a country in which we can be proud to live, and to die.

(1) formerly HTLV-III/LAV

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The second surprise in the DOJ memo is the recognition of fear of contagion of AIDS, no matter how

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unreasonable, as a legitimate basis for any employment decision. Without doubt, this interpretation appears at first blush to be protective of employers and very detrimental for employees with AIDS, ARC, antibody positivity, or anyone who might be regarded as having any of the above conditions. However, the Department's analysis is sure to be challenged when it is eventually raised in court proceedings. Most importantly, the interpretation appears to be completely at odds with the medical evidence and the guidelines of other federal agencies that the AIDS virus is not transmissible by casual contact in the workplace. Using an unreasonable fear of contagion as a basis for decisions, one could justify any number of bizarre employment decisions. For instance, an employer could refuse to employ an otherwise qualified person with cancer or with sickle cell anemia because of an alleged belief that these conditions are contagious. It is very difficult to believe any court would give even slight attention to such arguments.

One effect of the Department's interpretation may be to encourage employers to discharge all persons who are feared to be capable of transmitting the AIDS virus. If the employer waits until the employee is suffering from disabling effect of AIDS, a dispute could arise concerning whether the reason for the discharge was the disability, which is protected, or the fear of contagion, which is not protected. If an employer discharged

only an employee with the disabling effects of AIDS allegedly because of a fear of contagion, the discharged employee could focus on the failure of the employer to discharge antibody positive employees without symptoms as evidence that the employer's alleged fear of contagion was a pretext, and the true reason for discharge was the protected physical disability of the individual.

At this point, no one can tell whether the Department's interpretation will be accepted. The courts are not bound to follow the Department's analysis or result. Because an affected person can file a private cause of action against an employer under Section 504, the Department may not even be directly involved in the litigation that will resolve this issue.

Additionally, almost all states have handicap discrimination laws and these laws are not subject to the Department's interpretation. One state case interpreting the Massachusetts handicap discrimination law agreed with the Justice Department's opinion that the disabling effects of AIDS would qualify as a handicap(6). However, the Massachusetts court expanded the definition of handicap from the

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Department of Justice memo somewhat and noted that it is the potential to contract other illnesses that constitutes the handicap. Thus, a person with AIDS who does not presently suffer from any adverse physical effects of AIDS would still be considered handicapped. Moreover, the