Selected Bibliography on AIDS and Health Insurance

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I. SCOPE

This bibliography collects and organizes citations to books, journal articles, and cases that contribute legal analysis of the issues involved in providing health insurance to persons with AIDS. Tips for identifying legislation and regulations affecting the area are included so that researchers can easily update the bibliography.

The legal treatment of HIV (Human Immunodeficiency Virus) infection and the disease AIDS (Acquired Immune Deficiency Syndrome) is a volatile area of the law, particularly in the insurance and employment discrimination arenas. Many
changes are anticipated, in part because of the recent designation of AIDS as a legally defined disability under the Americans with Disabilities Act of 1990, and in part because of the Clinton Administration's comprehensive health care proposals. Future researchers should note the effects of these developments on the assumptions made in the literature written to date.

The books included in this list are recent publications that deal in whole or in significant part with the issues surrounding health insurance coverage for persons with AIDS. The selected titles present legal analyses of the competing interests of the insurance industry and the individuals infected with HIV.

The articles listed provide a substantial discussion of the legal issues involved in furnishing health insurance coverage to persons with AIDS. Articles with an economic or social policy core are included because these disciplines are fundamental to the theoretical basis under which both the private and public insurance industries make coverage decisions. Articles written from an insurance industry or business perspective without legal analysis, however, are excluded. Articles from bar journals and newspapers, including legal newspapers, are also excluded. Speculative discussions written before much was known about AIDS or HIV were also eliminated.

II. DATABASES SEARCHED

The following indexes and databases were searched through September 1993. The researcher can update the searches or, knowing which terms were searched (as indicated after each source), adapt them to fit individual needs.

The majority of citations were identified from these two sources:

*Legal Resource Index* (Information Access Co.)
Suggested Query: plural(allcaps(aids)) or hiv or acquired immune and insurance

This index provides citations to a wide variety of legal publications, including bar journals and legal newspapers. It can be searched in print as *Current Law Index* and on CD-ROM as *LegalTrac*; for this bibliography, it was searched on LEXIS. The *Index to Legal Periodicals* (H.W. Wilson Co.), another indexing source for legal journals, is also available in print, on CD-ROM, and on-line for commercial subscribers to LEXIS and WESTLAW.
RLIN (Research Libraries Group, Inc.)
RLIN is an information system and communications network with more than 58 million bibliographic records. It serves as a catalog of books and other holdings of major research libraries. Useful Library of Congress subject headings are:

- AIDS (Disease) — Law and legislation — United States
- Insurance, Health — United States
- Discrimination in insurance — Law and legislation — United States
- Medical care, Cost of — United States

The following two indexes function well as interim indexes, as it can take several months before articles are indexed in the major legal periodical indexes. A few legal journals not included in the major indexes are indexed here as well:

CARL UnCover (Colorado Association of Research Libraries)
Suggested Query: (aids or acquired immune) and insurance
CARL UnCover provides table of contents information taken from 14,000 journals in many disciplines since Fall 1988. It was searched through Cornell University's Albert R. Mann Library Gateway.

Current Index to Legal Periodicals (University of Washington Law Library)
Suggested Query: aids /s insurance
Current Index to Legal Periodicals is a current awareness index designed to bridge the lag time between article publication and indexing by the major legal periodical indexes. It was searched on WESTLAW in the CILP database and is also available in print.

In addition to legal journal indexes, there are numerous indexes and databases that encompass information on AIDS and health insurance. The following indexes have less to offer the researcher looking for legal analysis; however, many articles discuss insurance industry perspectives and employment considerations for the non-lawyer. All indexes were searched using DIALOG on WESTLAW, except for ABI/Inform which was searched using Cornell University's Albert R. Mann Library Gateway.
ABI/Inform
Suggested Query: acquired immune deficiency syndrome and health insurance

Academic Index (Information Access Co.)
Suggested Query: a.i.d.s. "acquired immune deficiency syndrome" h.i.v. & insurance

Economic Literature Index (American Economic Association)
Suggested Query: a.i.d.s. "acquired immune deficiency syndrome" h.i.v. & insurance

PAIS (Public Affairs Information Service)
Suggested Query: a.i.d.s. "acquired immune deficiency syndrome" h.i.v. & insurance

III. BOOKS


AIDS LAW TODAY: A NEW GUIDE FOR THE PUBLIC (Scott Burris et al. eds., 2d ed. 1993).


FLORIDA SENATE COMM. ON COMMERCE, AIDS TESTING AND INSURANCE UNDERWRITING (1988).


INTERGOVERNMENTAL HEALTH POLICY PROJECT, AIDS — A PUBLIC CHALLENGE TO THE STATES (1988).


IV. JOURNAL ARTICLES

A. BUSINESS PERSPECTIVE: THE IMPACT OF HIV INFECTION AND AIDS ON THE INSURANCE INDUSTRY'S OPERATING ENVIRONMENT


B. COVERAGE OF DOMESTIC PARTNERS: LEGAL ISSUES EMPLOYERS CONSIDER WHEN DECIDING TO EXTEND INSURANCE COVERAGE TO DOMESTIC PARTNERS OF GAY & LESBIAN EMPLOYEES


C. HIV Testing as a Mandate: Evaluating the Justifications for HIV Testing as a Prerequisite to Coverage


D. ERISA and Self-Funded Group Health Plans: Exploration of the ERISA Preemption Doctrine and Legal Discrimination Against Employees with AIDS


BIBLIOGRAPHY ON AIDS & INSURANCE


E. THE INSURANCE UNDERWRITING DEBATE: LIMITING AIDS RELATED LOSSES TO THE INSURANCE INDUSTRY THROUGH THE UNDERWRITING PROCESS


**F. DISCRIMINATION: ARTICLES ARGUING THAT AIDS AND HIV INFECTION CONSTITUTE "HANDICAPS"


**V. CASE LAW**

Precedent offers no landmark or dispositive case law on our topic. Courts have recently addressed issues involving experimental treatment exclusions, reimbursement for treatment not considered medically necessary by the insurance industry or for pre-existing conditions, as well as the termination of insurance coverage. Some of the leading cases are:

**Phelps v. Field Real Estate Co.,** 991 F.2d 645 (10th Cir. 1993).

The failure to show that employment discharge was discrimination based on HIV-infected status under Colorado handicapped discrimination statute or that the discharge constituted intentional interference with ERISA-protected benefits.


ERISA does not require employers to maintain any particular medical benefits when employers reserved the right to change plans; employers may switch plans even to avoid covering a particular employee's disease. *(Note: This case was brought before the Americans with Disabilities Act of 1990 went into effect; results under that law may differ).*

**Weaver v. Reagen,** 886 F.2d 194 (8th Cir. 1989).

AZT treatment for AIDS patients considered medically necessary and must be covered by Missouri Medicaid.

An insurer's exclusion of "investigative" treatments enjoined; insurer compelled to cover bone marrow transplant.

Researchers tracking case law developments will be aided by these three sources:

AIDS Law & Litigation Reporter (University Publishing Group, 1987-).


AIDS Litigation Project: A National Survey of Federal, State & Local Cases Before Courts & Human Rights Commissions:


Cases arise from constitutional challenges, questions of statutory and regulatory interpretation, insurance contract disputes, and employment law issues. Many West topics and
key numbers index these issues but no one topic or number describes them all. Researching case law in standard print digests may be difficult. WESTLAW and LEXIS searches were performed for this bibliography. While few relevant cases were found, on-line searching was necessary to go directly to primary sources. However, researchers can also find all the cases through secondary sources. Diligent researchers without access to on-line legal research databases will be well served by the sources for tracking case law developments listed above.

VI. TRACKING LEGISLATION AND REGULATIONS

Many states and Congress have considered legislation and regulations prohibiting discrimination based on AIDS and HIV-related illnesses. Standard legal research strategies, in print and on-line, will provide references to the laws and regulations already in place.

To research the bills and regulations that have been introduced and to learn which states and which federal committees and agencies have dealt with the issue, researchers can use State Net. This is an on-line service available from Information for Public Affairs, Inc., and also accessible through WESTLAW and LEXIS. State Net provides bill and regulation summaries, status tables, and the full text of many bills.

Searches in State Net can be conducted using key words such as AIDS, acquired immune, and insurance. Topical searching is also useful. The following Topics can be searched:

- Insurance
- Health and Social Services.

Bills and regulations on health insurance and AIDS will be further identified under these Sub-Topics:

- AIDS and Other Sexually Transmitted Diseases
- Health and Accident Insurance
- Insurance Sales and Practices.