

## Selected Bibliography on AIDS and Health Insurance

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# A 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

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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
- United States. Americans with Disabilities Act of 1990.

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 AGENDA: EMERGING ISSUES IN CIVIL RIGHTS (Nan D. Hunter & William B. Rubenstein eds., 1992).

AIDS AND THE LAW (William H. L. Dornette ed., 1987).

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

AIDS:ONE: LEGAL, SOCIAL & ETHICAL ISSUES FACING THE INSURANCE INDUSTRY (James Vculek ed., 1988).

A.B.A. SEC. ON TORT AND INS. PRAC. AND THE DIV. FOR PROF. EDUC., FROM AIDS TO TORTS: WORKPLACE REMEDIES (1988).

AMERICAN MGMT. ASS'N, AIDS, THE WORKPLACE ISSUES (1985).

ASSOCIATION INTERNATIONALE POUR L'ÉTUDE DE L'ÉCONOMIE DE L'ASSURANCE, THE FOUR PILLARS, AIDS AND OTHER INSURANCE ISSUES (1988).

ATLANTIC INFO. SERVS., AIDS REFERENCE GUIDE: A SOURCE-BOOK FOR PLANNERS AND DECISION MAKERS (Steven J. Goodwin ed., 1991).

COLORADO DEPT' OF SOC. SERVS., ECONOMIC FEASIBILITY OF MEDICAID PAYING PRIVATE INSURANCE PREMIUMS FOR PERSONS LIVING WITH AIDS: A REPORT TO THE LEGISLATURE (1990).

MICHAEL J. COWELL & WALTER H. HOSKINS, SOC'Y OF ACTUARIES, AIDS, HIV MORTALITY, AND LIFE INSURANCE (1987).

*Disapprove D.C. Council Act 6-170: Hearing and Markup Before the Subcomm. on Fiscal Affairs and Health and the Comm. on D.C., House of Representatives, on H.J. Res. 663 to Disapprove the Action of the D.C. Council Approving the Prohibition of Discrimination in the Provision of Ins. Act of 1986, 99th Cong., 2d Sess. (1986).*

JILL EDEN ET AL., OFFICE OF TECHNOLOGY ASSESSMENT, AIDS AND HEALTH INSURANCE: AN OTA SURVEY (1988).

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

GAY MEN'S HEALTH CRISIS, THE STATE OF AIDS IN NEW YORK: LEADERSHIP, HOUSING, HEALTH CARE, INSURANCE, DRUG TREATMENT, EDUCATION (1992).

MARTIN GUNDERSON ET AL., AIDS: TESTING AND PRIVACY (1989).

HEALTH INS. ASS'N OF AM., AIDS CASE MANAGEMENT: WHAT HEALTH INSURANCE COMPANIES ARE DOING (1988).

HEALTH PROGRAM, OFF. OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, MEDICAL TESTING AND HEALTH INSURANCE (1988).

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DONALD H.J. HERMANN & WILLIAM P. SCHURGIN, LEGAL ASPECTS OF AIDS (1991).

SYMPOSIUM, INSURANCE AND THE AIDS EPIDEMIC: PROCEEDINGS OF A TWO-DAY SYMPOSIUM, MAY 2-3, 1988, CHICAGO, ILLINOIS (1988) (held by the Soc'y of Actuaries).

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

ROBERT M. JARVIS ET AL., AIDS LAW IN A NUTSHELL (1991).

JOHNSON & HIGGINS, A SURVEY OF COMPANY PRACTICES & POLICIES: AIDS & BENEFIT PLANS (1987).

KPMG PEAT MARWICK, MANAGING THE AIDS RISK: RESERVING, RISK CONTROL AND OTHER RELEVANT ISSUES: A BRIEFING FOR SENIOR EXECUTIVES (1989).

MINNESOTA INST. OF LEGAL EDUC., AIDS, HERPES AND INFECTIOUS DISEASES: EMPLOYMENT, TORT AND INSURANCE IMPLICATIONS (1989).

MINNESOTA INST. OF LEGAL EDUC., LEGAL IMPLICATIONS OF THE AIDS CRISIS (1991).

KIRK D. NEMER, AIDS AND DISCRIMINATION: LEGAL LIMITS ON INSURANCE UNDERWRITING PRACTICES (1988).

KIRK D. NEMER, THE POTENTIAL LIABILITY OF INSURANCE COMPANIES AND SELF-INSURED BUSINESSES FOR UNAUTHORIZED DISCLOSURE OF MEDICAL INFORMATION PROVIDED IN CONNECTION WITH AIDS RELATED INSURANCE CLAIMS (1988).

*Social Sec. Benefits for AIDS Victims: Hearing Before the Senate Subcomm. on Social Sec. and Family Policy of the Comm. on Fin., 100th Cong., 1st Sess. (1987).*

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SOC'Y OF ACTUARIES, U.S. GENERAL POPULATION PROJECTED AIDS MORTALITY RATES: REPORT OF THE COMMITTEE ON HIV RESEARCH (1989).

WASHINGTON ST. BAR ASS'N CONTINUING LEGAL EDUC. COMM., EMPLOYMENT LAW UPDATE: DISCRIMINATION, DRUGS, ALCOHOL, AIDS, SCREENING, INSURANCE (1988).

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

Allard E. Dembe, *Issues Affecting the Compensability of AIDS Under Workers' Compensation Insurance*, 7 AIDS & PUB. POL'Y J. 99 (1992).

Kenneth A. Getz & Judith D. Bentkover, *The Impact of AIDS on the Insurance Industry*, J. AM. SOC'Y C.L.U. & CHARTERED FIN. CONSULTANTS, Mar. 1992, at 54.

Fred J. Hellinger, *Forecasting the Medical Care Costs of the HIV Epidemic: 1991-1994*, 28 INQUIRY 213 (1991).

Anthony Pascal et al., *State Policies and the Financing of Acquired Immunodeficiency Syndrome Care*, HEALTH CARE FINANCING REVIEW, July 1989, at 91, reprinted in RAND NOTES (1989).

Anthony Pascal et al., *The Costs and Financing of Care for AIDS Patients: Result of a Cohort Study in Los Angeles*, RAND NOTES (1990).

Philip Rutsohn & Donald Law, *Acquired Immune Deficiency Syndrome: A Small Business Dilemma*, J. SMALL BUS. MGMT., Jan. 1991, at 62.

Mark H. Waymack, *AIDS, Ethics and Health Insurance*, BUS. & PROF. ETHICS J., Spring 1991, at 73.

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

Linda M. Laarman, *Employer Health Coverage for Domestic Partners — Identifying the Issues*, 18 EMPLOYEE REL. L.J. 567 (1993).

Martha McDonald, *Domestic Partner Benefits Changes*, BUS. & HEALTH, Oct. 1990, at 11.



C. HIV TESTING AS A MANDATE: EVALUATING THE  
JUSTIFICATIONS FOR HIV TESTING AS A PREREQUISITE  
TO COVERAGE

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Peter Hiam, *Insurers, Consumers, and Testing: The AIDS Experience*, 15 L., MED. & HEALTH CARE 212 (1987).

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Nancy Perkins, Comment, *Prohibiting the Use of the Human Immunodeficiency Virus Antibody Test by Employers and Insurers*, 25 HARV. J. ON LEGIS. 275 (1988).

Arlene Zarembka, *HIV: Insurance, Employment, and Mandatory Testing Issues*, 53 MO. L. REV. 679 (1988).

D. ERISA AND SELF-FUNDED GROUP HEALTH PLANS:  
EXPLORATION OF THE ERISA PREEMPTION DOCTRINE AND  
LEGAL DISCRIMINATION AGAINST EMPLOYEES WITH AIDS

James R. Bruner, Note, *AIDS and ERISA Preemption: The Double Threat*, 41 DUKE L.J. 1115 (1992).

John F. Dudley, Comment, *The Medical Costs of AIDS: Abandoning the HIV-infected Employee*, 30 DUQ. L. REV. 915 (1992).

Lawrence O. Gostin & Alan I. Widiss, *What's Wrong with the ERISA Vacuum? Employers' Freedom to Limit Health Care Coverage Provided by Risk Retention Plans*, 269 JAMA 2527 (1993):

Vickie L. Henry, *Self-insured Employers May Cap Health Coverage for Specific Diseases*, 20 L., MED. & HEALTH CARE 410 (1992).

Eric C. Sohlgren, Note, *Group Health Benefits Discrimination Against AIDS Victims: Falling Through the Gaps of Federal Law — ERISA, the Rehabilitation Act and the Americans with Disabilities Act*, 24 LOY. L.A. L. REV. 1247 (1991).

Karen E. Woods, *Impact of the ADA on Employer-Provided Insurance: Limiting the Potential Financial Burden of Health Care for AIDS Victims*, 8 LAB. LAW. 271 (1992).

Michele Zavos, *AIDS and Insurance: No Guarantees*, HUM. RTS., Winter 1993, at 18.

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

Randall R. Bovbjerg, *AIDS and Insurance: How Private Health Coverage Relates to HIV/AIDS Infection and to Public Programs*, 77 IOWA L. REV. 1561 (1992).

Edward E. Hollowell & James E. Eldridge, *AIDS and the Insurance Industry*, 10 J. LEGAL MED. 77 (1989).

Ruth E. Kim & Kimball R. McMullin, *AIDS and the Insurance Industry: An Evolving Resolution of Conflicting Interests and Rights*, 7 ST. LOUIS U. PUB. L. REV. 155 (1988).

Robert A. Padgug & Gerald M. Oppenheimer, *AIDS, Health Insurance, and the Crisis of Community*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 35 (1990).

Suzanne M. Russell, *Prohibiting AIDS Testing in the Health Insurance Context: Patching Up a Patchwork System*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 131 (1990).

Benjamin Schatz, *The AIDS Insurance Crisis: Underwriting or Overreaching?*, 100 HARV. L. REV. 1782 (1987).

Suzanne J. Scrutton, *Left of Center and Right in Front of Us: AIDS Testing in Insurance Underwriting — The Social and Economic Implications of This Practice on Individuals and Society*, 17 CAP. U. L. REV. 273 (1988).

Alan I. Widiss, *To Insure Or Not To Insure Persons with the Virus that Causes AIDS*, 77 IOWA L. REV. 1617 (1992).

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

Tammie L. Follett, *AIDS: An Insurable Handicap*, 9 HAMLINE J. PUB. L. & POL'Y 117 (1988).

Lawrence O. Gostin, *The AIDS Litigation Project: A National Review of Court and Human Rights Commission Decisions, Part II: Discrimination*, 263 JAMA 2086 (1990).

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.

*McGann v. H&H Music Co.*, 946 F.2d 401 (5th Cir. 1991), *cert. denied sub nom.* *Greenberg v. H&H Music Co.*, 113 S. Ct. 482 (1992).

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.

Bradley v. Empire Blue Cross and Blue Shield, 149 Misc. 2d 20, 562 N.Y.S.2d 908 (1990).

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 Policy & Law: The Bi-weekly Newsletter on Legislation, Regulation and Litigation Concerning AIDS* (Buraff Publications, 1986-).

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

LAWRENCE O. GOSTIN ET AL., AIDS LITIGATION PROJECT: A NATIONAL SURVEY OF FEDERAL, STATE & LOCAL CASES BEFORE COURTS & HUMAN RIGHTS COMMISSIONS (Pub. Health Service/Dep't Health & Hum. Services, Washington, D.C., 1990).

LAWRENCE O. GOSTIN & LANE PORTER, AIDS LITIGATION PROJECT II: A NATIONAL SURVEY OF FEDERAL, STATE & LOCAL CASES BEFORE COURTS & HUMAN RIGHTS COMMISSIONS: OBJECTIVE DESCRIPTION OF TRENDS IN AIDS LITIGATION (Pub. Health Service/Dep't Health & Hum. Services, Washington, D.C., 1991).

LAWRENCE O. GOSTIN, AIDS LITIGATION PROJECT III: A NATIONAL SURVEY OF FEDERAL, STATE & LOCAL CASES BEFORE COURTS & HUMAN RIGHTS COMMISSIONS (U. Publishing Group, Frederick, Md., forthcoming 1993).

Legal newspapers report significant cases in this developing area of law and are indexed in the Legal Resource Index. The major U.S. legal newspapers are: *National Law Journal*, *American Lawyer*, *New York Law Journal*, *Los Angeles Daily Journal*, *Chicago Daily Law Bulletin*, and *Legal Times*.

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.