

Insurance Industry and Gay Rights Activists Clash Over AIDS Testing

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SACRAMENTO — Representatives of the insurance industry on Tuesday deluged state legislators with data to convince them that California should permit AIDS-antibody testing as a condition of obtaining policies.

With considerably fewer resources at their disposal — and much less paper — gay-rights advocates and AIDS program workers urged legislators to proceed cautiously in granting the health and life insurers a tool to ostracize AIDS victims from society.

Testifying during an interim legislative hearing of the Assembly Finance and Insurance Committee, industry spokesmen and physicians said healthy insured persons must bear the brunt of the increased

insurance costs of AIDS victims who are not identified prior to being insured because the HIV test is prohibited as a condition of insurance under a 1985 California law.

“The life and health insurance industry has been actively involved in the fight against this terrible disease,” said Russel P. Iuculano, senior counsel and legislative director for the American Council of Life Insurance Companies. “While we believe that AIDS is everyone’s problem and that everyone must be involved in the fight against it, we do not believe AIDS should be given favored status when it comes to insurance.

“We feel very strongly that we must be allowed to test for HIV infection, just as we test for and inquire about other medical conditions that affect mortality, such as diabetes, heart disease or

caacer,” he added.

Noting that most state legislatures have “rejected legislation to ban the use of AIDS-related testing for insurance purposes,” Iuculano said the 1985 California law should be changed because it “constitutes unfair discrimination against non-infected insureds and against persons with other diseases or serious health conditions who do not receive preferential treatment by insurers.”

Iuculano said only California and the District of Columbia prohibit insurers from screening out HIV-positive applicants. The California law, enacted as part of the state Health and Safety Code in 1985, permits use of the “T-cell” and other immune-system tests, which are not precise for AIDS. Insurance medical experts said the reliability of HIV-antibody

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testing procedures has since been more fully documented.

Although a federal court upheld a similar law in Washington, D.C., in 1986 in *American Council of Life Insurance v. District of Columbia*, Iuculano said the court questioned the wisdom of the act's five-year moratorium on all AIDS testing.

Insurance industry representatives from throughout the nation strongly supported a change in the California law.

Joan E. Herman, a vice president of Phoenix Mutual Life Insurance Co., said group insurers "will be reluctant to continue writing supplemental life plans" unless they can use the HIV-antibody test.

"This in turn will result in a loss of affordable coverage and a reduction in financial security for many citizens of this state," Herman said.

"If group insurers are not allowed to screen for HIV infection, we will be put in the position of unfairly discriminating against healthy people and against people with other diseases that we recognize as carrying a higher than normal risk," Herman added. "In addition, insurers' financial solvency may be threatened."

Brent O. Nance, insurance case manager for the AIDS Project in Los Angeles, presented committee members with a somewhat brighter picture of the solvency of the insurance industry.

"The fact is, the AIDS claims are significantly less costly than many cancers, heart disease and neonatal care," Nance said. "We will spend an estimated \$85.2 billion on heart disease this year, dwarfing the estimated \$1.1 billion being spent this year on AIDS care. We spend more paying for increased health expenses for smokers each year than we have spent to date for AIDS health care."

Nance said fewer than half of AIDS victims have health insurance, with the remainder losing coverage through job termination or financial pressures.

"I need not remind you that industry efforts to exclude AIDS from benefits or allowance for full AIDS testing will push more of the cost upon the public sector," Nance told legislators.

Health-care workers urged legislators to focus on the overriding issue of the cost of AIDS care — and not to shift the burden entirely to already overburdened public-sector health-care programs, as would occur in cases of persons who test HIV-positive and are denied jobs or health insurance.

"Since very few individuals can afford

private health insurance, persons who test HIV-positive, or have ARC [AIDS-related complex] or AIDS, will be forced to join the pool of more than 5 million uninsured Californians," said Helen Miramontes, immediate past-president of the California Nurses Association. "We are all too familiar with the patient-dumping practices of some acute-care facilities in the state of California. Such dumping has occurred as a result of denial of care because the person is uninsured or lacks financial resources."

James Spahr, a New York Life Insurance Co. agent in San Francisco who said his market is the San Francisco gay community, said the insurance industry generally is not sensitive to the needs of AIDS victims.

He said a speaker at a recent underwriters conference was "telling mean-spirited AIDS jokes from the podium," and when observers objected, "he told more mean-spirited AIDS jokes."

Spahr said insurers should not have access to HIV test results because "they have enough information to go on."

"There are more than adequate medical indicators," Spahr said. "They don't need the HIV test."

"Carriers have always required blood tests that are triggered by the amount of the application and the age of the applicant," Nance said. "Three years ago, a 35-year-old male could often obtain up to \$500,000 of coverage without having to have a physical or submit to a blood profile. Today most carriers require an automatic blood profile at \$100,000 and sometimes even lower. Carriers are now able to screen out more immune-suppressed individuals with these changes."

Although insurance industry representatives insisted that the test results would be entirely confidential and that decisions to deny insurance are not made on the basis of sexual orientation — a denial that is illegal in California — some legislators expressed concern about the tests targeting gays or minorities.

"I continue to be concerned about what your industry is trying to do to the minority community," Assemblywoman Teresa Hughes, D-Los Angeles, told industry representatives, noting that intravenous-drug use, a cause of AIDS, is more prevalent in poor minority communities. "I continue to be concerned about the kind of prejudice that might be manifested if they apply for insurance and are members of ethnic minorities. I don't think we're trying to overregulate the industry. I think we're trying to protect the public."