# **02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**031 BUREAU OF INSURANCE**

**Chapter 490: ACQUIRED IMMUNE DEFICIENCY SYNDROME AND MEDICAL AND LIFESTYLE STANDARDS RULE**

**Section 1. Authority**

 This rule is promulgated by the Superintendent pursuant to 5 M.R.S.A. §19203-A, 24 M.R.S.A. §2316, 24-A M.R.S.A. §212, 24-A M.R.S.A. §2151-B, 24‑A M.R.S.A. §2152, 24-A M.R.S.A. §2159, and 24-A M.R.S.A. §2412.

**Section 2. Purpose**

 The purpose of this rule is to clarify the standards applicable to written informed consent forms required to be completed by persons required to take a test for the presence of the antibody to the Human Immunodeficiency Virus (HIV) or for the Human Immunodeficiency Antigen by an insurer, nonprofit hospital service organization, nonprofit medical service organization, or a nonprofit health care plan, to establish standards for post-test counseling required to be provided to persons subject to testing as required by 5 M.R.S.A. §19203-A, and to establish standards for medical and lifestyle application questions and underwriting.

**Section 3. Definitions**

 A. "Informed Consent" means consent to testing for the presence of antibodies to the Human Immunodeficiency Virus or for the presence of the Human Immunodeficiency Antigen. The Informed Consent shall be based on an actual understanding by the person to be tested:

 1. That the test is being performed;

 2. Of the nature of the test;

 3. Of the persons to whom the results of that test may be disclosed;

 4. Of the purpose for which the test results may be used; and

 5. Of any reasonably foreseeable risks and benefits resulting from the test.

 The informed consent shall be wholly voluntarily and free from express or implied coercion.

 B. "Antibodies" to HIV means the specific immunoglobulin produced by the body's immune system in response to HIV.

 C. "HIV" means the Human Immunodeficiency Virus identified as the causative agent of Acquired Immune Deficiency Syndrome or AIDS.

 D. "HIV Antigen" means the specific immune-recognizable marker protein of HIV.

 E. "HIV Infection" means the state where HIV invades the body and is believed to be present in the body as indicated by a repeatedly positive enzyme immunoassay (EIA), and confirmed by a positive Western Blot immunofluorescence assay, or other generally accepted secondary level testing.

 F. "HIV Test" means a test which tests for the presence of the antibody to HIV or a test for an HIV antigen.

 G. "Nonprofit Entity" means a nonprofit hospital or medical service organization or a nonprofit health care plan.

 H. "Post-Test Counseling" for persons required to take an HIV test by an insurer, nonprofit hospital or medical service organization, or health care plan shall be defined pursuant to 5 M.R.S.A. §19204-A.

 I. "Superintendent" means Superintendent of Insurance.

**Section 3-A. Approval Required**

 No insurer, nonprofit hospital or medical service organization or nonprofit health care plan shall test applicants for HIV unless the test has been approved by the United States Food and Drug Administration for such use.

**Section 4. Medical and lifestyle application questions and underwriting standards**

 A. No question shall be used on an application for insurance which is designed to establish the sexual orientation of the applicant. Specifically prohibited practices include, but are not limited to, utilization of the marital status, "living arrangements," occupation, gender, medical history, beneficiary designation, or zip code or other territorial classification of an applicant to establish or aid in establishing the applicant's sexual orientation.

 B. No question shall be used which requests an applicant to reveal whether the person has obtained an HIV test or the results of an HIV test taken prior to the application for insurance coverage.

 C. Questions relating to medical and other factual matters intending to reveal the possible existence of a medical condition are permissible if they are not used in order to establish the sexual orientation of the applicant.

 D. Questions relating to the applicant's having or having been diagnosed as having or having been advised to seek treatment for a sexually transmitted disease are permissible.

 E. For purposes of rating an applicant for health and life insurance, an insurer may impose territorial rates, but only if the rates are based on sound actuarial principles and are related to actual or reasonably anticipated experience.

 F. No decisions concerning rates, rating classification, limitations to coverage, or insurability of any person shall be made because an applicant has demonstrated AIDS-related concerns by seeking counseling from health care professionals.

 G. No decisions concerning rates, rating classification, limitations to coverage, or insurability of any person shall be made on the basis of information concerning an applicant's sexual orientation.

 H. No insurer or nonprofit entity may make any decision concerning rates, rating classification, limitations to coverage, or insurability of any person on the basis of T-cell tests. Insurers and nonprofit entities may utilize T-cell tests in order to determine whether further diagnostic tests are necessary.

 I. Any failure to comply with the terms of this section shall be deemed an unfair trade practice within the meaning of Chapter 23 of the Insurance Code (Title 24-A). The remedies provided in Chapter 23 shall not be exclusive but shall be in addition to any other remedies available by law.

**Section 5. Informed consent to AIDS testing**

 A. Title 5 M.R.S.A. §19203-A requires that an HIV test be voluntary and undertaken only with a patient’s knowledge and understanding that an HIV test is planned. A written informed consent of the person to be tested must be obtained prior to testing. Informed Consent forms as required by 5 M.R.S.A. §19203-A shall be filed with the Superintendent of Insurance consistent with 24-A M.R.S.A. §2412 and subject to 24-A §601 filing fee requirements.

 B. The Informed Consent forms may be in the standardized format provided by Attachment A. The form may be filed in a different format if the basis for each divergence from the standardized form is explained by the insurer or nonprofit entity and the Superintendent finds that the proposed form includes all the information contained in the standard form and is not inaccurate, misleading, or inconsistent with any applicable law or rule.

 C. When an Informed Consent form is filed by the insurer or nonprofit entity with the Superintendent for approval, the following disclosures shall be included in that filing:

 1. HIV testing protocol employed;

 2. Manner of reporting HIV test results to the Medical Information Bureau (MIB);

 3. Nature of written AIDS informational materials provided to the applicant, including copies of material if not widely available; and

 4. Manner of providing post-test counseling.

 At least 30 days prior to implementing any change in the procedures or material disclosed in Paragraphs 1 through 4, the insurer or nonprofit entity shall file any proposed changes with the Superintendent.

 D. The Informed Consent form shall not be approved if the disclosure provided pursuant to Subsection C, Paragraphs 1 through 4 indicates that the insurer or nonprofit entity has not complied with relevant provisions of Maine law or this Rule.

 E. Each insurer or nonprofit entity utilizing a written form as proof of the process of obtaining the informed consent of applicants for insurance to take an HIV test shall read that form aloud to the applicant prior to his or her signing of the form.

 F. If an applicant is required to submit a second sample for testing, notification of this requirement shall be in writing, and shall include notification of the continued availability of post-test counseling.

**Section 6. Test Results and Counseling**

A. Prior to or at the time an applicant is requested to obtain an HIV Test, the insurer or nonprofit entity shall notify the applicant of the availability of Post-test Counseling if test results are positive

B. **Post-test counseling.** "Post-test counseling" must include:

1. Personal counseling that includes, at a minimum, a discussion of:

(a) The test results and the reliability and significance of the test results. The person providing post-test counseling shall communicate the result confidentially and through personal contact;

(b) Information on good preventive practices and risk reduction plans; and

(c) Referrals for medical care and information and referrals for support services, including social, emotional support and legal services, as needed;

2. An entry in the medical record of the person being counseled summarizing the contents of the discussion; and

3. The offer of face-to-face counseling. If the subject of the test declines, the provider of the test may provide an alternative means of providing the information required by paragraph 1.

4. In addition to meeting the requirements outlined above, the provider of an HIV test must give to the person being counseled a written document containing information on the subjects described in paragraph 1 above.

 C. Post-test Counseling may be performed by a licensed physician, licensed psychologist, licensed clinical social worker, licensed nurse, or qualified and registered physician's assistant. Licensing or registration shall be by the State of Maine or, when the applicant seeks counseling in another jurisdiction, by a jurisdiction with similar licensing requirements. For the purpose of this Rule, counseling performed by one of the referenced professionals shall be called Professional Counseling.

 D. Post-test Counseling may also be performed by any person who has completed a course in AIDS counseling under the direction of the Maine Department of Human Services. For the purpose of this Rule, counseling provided by a person who has completed the prescribed course and who is not a professional of a type listed in subsection (~~2~~ A) shall be called Voluntary Counseling.

 E. Professional Post-test Counseling shall be available to all applicants whether or not Voluntary Post-test Counseling is available. Professional Counseling shall be provided by the professional selected by the applicant. The applicant may seek Professional Counseling from the counselor of his/her choice.

 F. Where both Voluntary and Professional Post-test Counseling are available, the applicant may elect to have either Voluntary or Professional Counseling.

 G. Positive Test Results

 At or prior to the time positive HIV Test results are released to the person designated by the applicant or prior to the time positive HIV Test results are released to the applicant, if no physician or other person is designated by the applicant, the insurer or nonprofit entity must notify the person designated or the applicant:

 1. Of the availability of HIV Post-test Counseling; and

 2. That the insurer or nonprofit entity will pay the usual and customary charge for one session of Professional or Voluntary Post-test Counseling received by the applicant.

 *(Drafting Note: The Maine Department of Human Services has recommended that certain information be considered at a Post-test Counseling session. The Department's current recommendation is contained in Attachment C.)*

 H. Release of test results to Healthcare Provider

 In the event of positive or indeterminate test results and in the event that the applicant has not designated a health care provider to receive test results, the insurer shall provide written notification to the applicant that an abnormal test result has been obtained, recommend that a health care provider be authorized to receive test results, and recommend the applicant consult that provider.

**Section 7. Medical Information Bureau**

 If Positive HIV test results are reported to the Medical Information Bureau they shall be reported in a nonspecific manner, as generic blood disorders.

**Section 8. Approval of forms Required**

 No insurer, nonprofit hospital or medical service organization or nonprofit health care plan shall require applicants for insurance to take an HIV test prior to obtaining the Superintendent's approval of the consent form and information required to be filed pursuant to Section 5 of this Rule.

**Section 9. Severability**

 If any section, term, or provision of this Rule shall be adjudged invalid for any reason, such judgment shall not impair or invalidate any other section, term, or provision of this Rule, and the remaining sections, terms, and provisions shall remain in full force and effect.

**Section 10. Effective date**

 The effective date of this Rule shall be May 1, 1989. The effective date of the 1998 revisions shall be June 1, 1998. The effective date of the 2008 revisions shall be February 13, 2008 (filing 2008-73).

 *(DRAFTING NOTE: Insurers and nonprofit entities are reminded that obligations to obtain the informed consent and to provide post-test counseling of persons who test positive for HIV in connection with applications for insurance exist irrespective of whether this Rule is in effect.)*

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 18, 2025

**ATTACHMENT A**

**HIV TEST INFORMED CONSENT FORM**

Insurer: (Name and Address) Examiner: (Name and Address)

BACKGROUND

 Acquired Immunodeficiency Syndrome (AIDS) is a life-threatening disorder of the immune system. It is caused by a virus called HIV. The virus is spread by sexual contact with an infected person, by exposure to infected blood (as in needle sharing during intravenous drug use or, rarely, as a result of a blood transfusion), or from an infected mother to her newborn infant.

 To evaluate your eligibility for insurance or insurance benefits, it is requested that you provide a sample of your body fluid or other specimen for testing and analysis. One of the tests is to determine the presence of antibodies to the HIV virus. This test is actually a series of tests performed upon your body fluid or other specimen sample by a medically accepted procedure which is extremely reliable. The testing will be performed by a licensed laboratory.

DISCLOSURE OF TEST RESULTS

 All test results will be treated confidentially. The results of the test will be reported to the insurer named above. The results also may be reported to its affiliates, reinsurer, or contractors in connection with insurance you have or for which you have applied.

 In addition, if your HIV antibody test is abnormal (positive), the insurer may request an additional sample as necessary. If the insurer is a member of the Medical Information Bureau (MIB) and you choose to decline that request, the insurer will report to MIB a generic code which specifies only that a test has been ordered and not received. If the final test result for HIV antibodies is other than normal, a generic code signifying a nonspecific blood abnormality may be made known to the Medical Information Bureau (MIB) as described in the notice given you at the time of application. The MIB is a membership organization of life and health insurance companies which operates as an information exchange on behalf of its members. If you apply to another MIB member company for life or health insurance coverage, or make a claim for benefits to such a company, the MIB, upon request, will supply the information in its file to that member. The fact that the test has been done and the results of the test will not be otherwise disclosed except as may be required by law or as authorized by you.

TEST RESULTS

 Positive Test Results. While positive test results do not necessarily mean that you have AIDS, they do mean that you are at serious risk of developing AIDS or AIDS-related conditions. You may be infected with HIV and infectious to others. You should seek medical follow-up with your personal health care provider. The insurer will contact you for the name of the health care provider to whom you may want your test results disclosed.

 Test Accuracy. HIV test results are not 100 percent accurate. Possible errors include:

 (a) False positives: The test gives a positive result, even though you are not infected. This happens only rarely and is more common in persons who have not engaged in high risk behaviors. Retesting should be done to help confirm the validity of a positive test.

 (b) False negatives: The test gives a negative result, even though you are infected with HIV. This is most likely to happen in recently infected persons; it takes at least 4 to 12 weeks for a positive test result to develop after a person is infected, and may take as long as 6 to 12 months.

RISKS FROM HAVING THE TESTS

 A positive test result may cause you significant anxiety. It also will adversely affect your insurance application and may result in uninsurability for life, health, or disability insurance for which you may apply in the future.

YOU HAVE THE RIGHT TO ASK QUESTIONS (EITHER ORALLY OR IN WRITING) AND OBTAIN FURTHER INFORMATION

 If you have any questions relating to AIDS, the HIV test and the consequences of being tested or not being tested, you are entitled to answers to those questions by the person offering the test or other knowledgeable person before you agree to testing.

OTHER SOURCES OF INFORMATION

 For more information about AIDS and the HIV test, you may call the Maine Bureau of Health at (207) 287-3747. You may also call the Maine AIDS Hotline at 1-800-851-AIDS. (Insurers may at their option provide an additional reference to their corporate medical departments.)

 I have read and I understand this Notice of AIDS Virus (HIV) Antibody Testing and Consent for Testing. For my information, I have been given written material about AIDS. I voluntarily consent to the withdrawal of body fluid or other specimen from me, the testing of my body fluid or other specimen for HIV antibodies, and the disclosure of the test results as described above.

Name of Proposed Insured (Please Print) Birth Date

Signature of Proposed Insured Date

State of Residence

Signature of Person Obtaining Consent Date

**ATTACHMENT B**

**Points to Cover for a Positive HIV Result**

**Emotional impact of test**

\_\_\_\_ Emotional/coping assessment

\_\_\_\_ Support system assessment

\_\_\_\_ Suicide assessment

\_\_\_\_ Follow-up appointment if necessary

**Meaning of test**

\_\_\_\_ Anonymity/Confidentiality and restrictions on release of test results

\_\_\_\_ Nature and reliability

\_\_\_\_ Difference between HIV and AIDS; HIV disease progression

**Medical follow-up**

\_\_\_\_ Prompt medical evaluation

\_\_\_\_ Importance of early treatment

\_\_\_\_ Immune system protection

\_\_\_\_ Co-factors

\_\_\_\_ STD / HEP / TB screening

\_\_\_\_ Pregnancy options

**Risk reduction**

\_\_\_\_ Importance of risk reduction for health maintenance and protection of partners

\_\_\_\_ Risk/harm reduction plan formulated

**Partner Counseling and Referral Services**

\_\_\_\_ Importance of informing sex/needle-sharing partner(s)

\_\_\_\_ Assistance offered (coaching, role-play, or actually talking with partners)

\_\_\_\_ Offer and explain Maine CDC Anonymous Partner Notification

\_\_\_\_ Request assistance from Maine CDC

\_\_\_\_ Client will: \_\_\_\_ use Maine CDC PCRS

\_\_\_\_ History of blood/ semen/body fluid/organ donation discussed

COUNSELOR SIGNATURE / DATE: