40-1-36 Life and health insurance applications; underwriting; acquired immunodeficiency syndrome (AIDS); defined.

(a) As used in this regulation, these terms shall have the following meanings:

(1) "Acquired immunodeficiency syndrome (AIDS)" means one or more opportunistic diseases which are at least moderately indicative of underlying cellular immunodeficiency, along with the absence of all known underlying causes of cellular immunodeficiency and all other causes of reduced resistance reported to be associated with at least one of those opportunistic diseases.

(2) "AIDS related complex (ARC)" means a syndrome in which the individual displays many of the same symptoms of AIDS, including the presence of the HIV antibody.

(3) "Adverse underwriting decisions" mean the actions described in K.S.A. 40-2,111(a).

(4) "Applicant" means the individual proposed for coverage.

(b) All individual and group applications for insurance that require health information or questions shall comply with the following standards:

(1) Whenever an applicant is requested to take an HIV antibody test in connection with an application for insurance, the insurer shall:

(A) Obtain written informed consent from the applicant;

(B) reveal the use of the test to the applicant;

(C) provide the applicant printed material prior to testing containing factual information describing AIDS, its causes, symptoms, how it is and can be spread, the tests used to detect the HIV antibody and what a person should do whose test results are positive; or, arrange for the applicant to receive relevant counseling from a qualified practitioner who has had extensive training and experience in addressing the fears, questions and concerns of persons tested for the HIV antibody;

(D) administer an initial test which meets the test protocol established by the food and drug administration of the federal department of health and human services;

(E) administer a second test, the immunoelectroprecipitate using disrupted whole virus antigen test (western blot), to substantiate an initial positive test result; and

(F) disclose the results of the testing in accordance with K.S.A. 40-2,112(b)(2) and (3).

(2) Insurers may ask diagnostic questions on applications for insurance.

(3) Application questions shall be formed in a manner designed to elicit specific medical information and not lifestyle, sexual orientation or other inferential information.
(4) Questions which are vague, subjective, unfairly discriminatory, or so technical as to inhibit a clear understanding by the applicant are prohibited.

(c) All underwriting shall be based on individual review of specific health information furnished on the application, any reports provided as a result of medical examinations performed at the company's request, medical record information obtained from the applicant's health care providers or any combination of the foregoing. Adverse underwriting decisions shall not be based on less than conclusive responses to application questions.

(d) Adverse underwriting decisions shall be based on sound actuarial principles pursuant to K.S.A. 40-2,109.

(Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2,109, 40-2404(7) as amended by L. 1987, Ch. 171, Sec. 1; effective, T-88-35, Sept. 17, 1987; amended May 1, 1988.)