



COMMONWEALTH OF PUERTO RICO

OFFICE OF THE COMMISSIONER OF INSURANCE

IN REPLY PLEASE
REFER TO:

Ruling Letter N-AV-I-8-38-90

August 14, 1990

TO ALL INSURERS AND HEALTH SERVICES ORGANIZATIONS
AUTHORIZED TO TRANSACT LIFE AND/OR HEALTH INSURANCE
OR HEALTH CARE PLANS IN PUERTO RICO

Re: Medical/Lifestyle Questions
and Underwriting Guidelines

Dear Sirs:

In accordance with Section 11.110(1) of the Insurance Code of Puerto Rico, we have decided to implement the Medical/ Lifestyle Questions and Underwriting Guidelines recommended by the National Association of Insurance Commissioners (NAIC) in its December 1986 meeting.

The purpose of the following guidelines is to assist insurers and health services organizations to formulate and design medical/lifestyle questions in applications for and underwriting standards affecting health and/or life insurance coverages, or health care plans in conformity with the fair standards adopted by the NAIC.

I. General Propositions

A. No inquiry in an application for health or life insurance coverage, or health care plans, or in an investigation conducted by an insurer, health services organization or an insurance support organization on its behalf in connection with an application for such coverage, shall be directed towards determining the applicant's sexual orientation.

B. Sexual orientation may not be used in the underwriting process or in the determination of insurability.

C. Insurance support organizations shall be directed by insurers not to investigate, directly, the sexual orientation of an applicant or a beneficiary.

II. Medical/Lifestyle Applications Questions and Underwriting Standards

A. No question shall be used which is designed to establish the sexual orientation of the applicant.

B. Questions relating to the applicant having or having been diagnosed as having AIDS or ARC (Aids Related Complex) are permissible if they are factual and designed to establish the existence of the condition.

For Example: Insurers and health services organizations should not ask "do you believe you may have...?", "Have you been told you have...?", but rather "do you know or have reasons to know...?"

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 as a proxy to establish the sexual orientation of the applicant, and the applicant has been given an opportunity to provide an explanation for any affirmative answers given in the application.

For Example: "Have you had chronic cough, significant weight loss, chronic fatigue, diarrhea, enlarged glands,..." These types of questions should be related to a finite period of time preceding completion of the application and should be specific. All of the questions above should provide the applicant the opportunity to give a detailed explanation.

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. Neither the marital status, the living arrangements, the occupation, the gender, the medical history, the beneficiary designation, nor the zip code or other territorial classification of an applicant may be used to establish, or aid in establishing, the applicant's sexual orientation.

F. No adverse underwriting decision shall be made because medical records or a report from an insurance support organization shows that the applicant has demonstrated AIDS-related concerns by seeking counselling from health care professionals. This subsection does not apply to an applicant seeking treatment and/or diagnosis.

G. Whenever an applicant is requested to take an AIDS-related test in connection with an application for individual insurance or individual health care plan the use of such a test must be revealed to the applicant and his or her written consent obtained. No adverse underwriting decision shall be made on the basis of such a positive AIDS-related test unless an established test protocol approved by the Commissioner of Insurance has been followed.

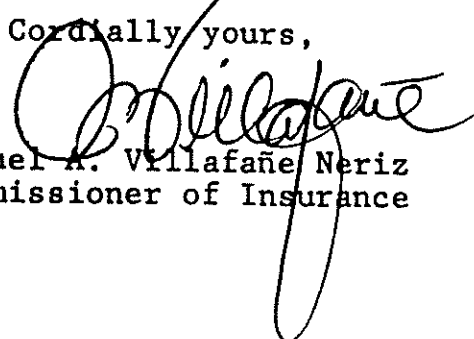
The protocol accepted by the Commissioner of Insurance, at this moment, requires two positive ELISA tests and one positive Western blot test. It may be replaced by new and more effective tests which can be developed in the future.

Failure to comply with these guidelines may be the basis for withdrawal of approval of the insurer's previously approved policy form, as well as the basis for the imposition of any other sanction prescribed by the Insurance Code of Puerto Rico. Previously approved applications which are not in compliance with these guidelines must be amended so as to comply with the same.

Strict compliance with the above stipulated guidelines is hereby required.

The effective date for these guidelines is September 1, 1990.

Cordially yours,



Miguel A. Villafañe Neriz
Commissioner of Insurance