

211 CMR: 36.00: THE USE OF ~~AIDSHIV~~-RELATED INFORMATION FOR LIFE AND HEALTH INSURANCE AND INFORMED CONSENT

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36.01: Authority

211 CMR 36.00 is issued under the authority of M.G.L. chs. 175; 176; 176A; 176B; 176C; 176D; 176E; 176F; and 176G, ~~and 178A.~~

36.02: Purpose and Scope

The purpose of 211 CMR 36.00 is to ensure that individuals who seek or obtain life and health insurance coverage (including disability insurance coverage) are not unfairly discriminated against, ~~and~~ are fully informed of the extent to which AIDSHIV-related information is used by ~~insurers~~carriers, of the implications of AIDSHIV-related testing and to ensure that the confidentiality of such information is maintained by ~~insurers~~carriers, insurance producers and those persons or entities that act on their behalf in connection with insurance transactions. 211 CMR 36.00 applies to any ~~AIDS-related~~ testing for HIV or use of AIDSHIV-related information for insurance purposes.

36.03: Definitions.

The following words as used in 211 CMR 36.00 shall, unless the context clearly requires otherwise, have the following meanings:

AIDS, Acquired Immune Deficiency Syndrome as defined by the Centers for Disease Control and Prevention, ~~of the United States Public Health Service.~~

~~AIDS-related information, any information concerning an individual's diagnosis or treatment for AIDS or ARC, or AIDS-related test information, including HIV-related test information and other information relating to HIV as HIV is defined in 211 CMR 36.03. AIDS-related information includes AIDS-related test information reported to the MIB or any other insurance support organization under any code. AIDS-related information does not include information not identifiable to any individual or information in the public domain.~~

~~AIDS-related test, a test for exposure to HIV or any virus or agent believed to cause AIDS, including an HIV-related test as defined in 211 CMR 36.03; or any other test which is intended to identify the presence or potential presence of the AIDS virus.~~

~~ARC, AIDS-related complex as defined by the Centers for Disease Control of the United States Public Health Service.~~

Carrier, any company as defined in M.G.L. c. 175, § 1 (or any life, health or disability insurance affiliate); any fraternal benefit society as defined in M.G.L. c. 176, § 1; any hospital service corporations defined in M.G.L. c. 176A, § 1; any medical service corporation as defined in M.G.L. c. 176B, § 1; any medical service plan as defined in M.G.L. c. 176C, § 1; any dental service corporation as defined in M.G.L. c. 176E, § 1; any optometric service corporation as defined in M.G.L. c. 176F, § 1; and any health maintenance organization licensed under M.G.L. c. 176G, § 1.

Commissioner, the Commissioner of Insurance, appointed pursuant to M.G.L. c.26, §6, or his or her designee.

~~ELISA, enzyme-linked immunosorbent assay.~~

HIV, Human Immunodeficiency Virus, which has been identified as the probable causative agent of AIDS. For purposes of this regulation, the definition of HIV will include but not be limited to AIDS.

HIV-related information, any information concerning an individual's diagnosis or treatment for HIV and other information relating to HIV as HIV is defined in 211 CMR 36.03. HIV-related information includes HIV test information reported to the MIB or any other insurance support organization under any code.

~~HIV-related test, a test for exposure to HIV, including a test for the antibody or antigen to HIV, including ELISA and Western blot assays.~~

Individual, any natural person who is a resident of the commonwealth, including a parent or legal guardian of any minor or incompetent person and who:

- (a) is a past, present or proposed named principal insured or certificate holder of life or health insurance;
- (b) is a past, present or proposed policyowner of life or health insurance;
- (c) is a past or present applicant of life or health insurance;
- (d) is a past or present claimant of life or health insurance; or
- (e) derived, derives or is proposed to derive insurance coverage under a life or health insurance policy or certificate.

Insurance producer, a producer, adjuster or other person conducting activities referred to in M.G.L. c. 175, § § 162 through 177 and insurance advisors as defined in M.G.L. c. 175, § § 177A through 177D.

Insurance support organization, any person or entity, including but not limited to the MIB as defined in 211 CMR 36.03, that regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons and that provides the information to ~~an insurer~~ carrier or insurance producer for insurance transactions, including:

- (a) the furnishing of consumer reports or investigative consumer reports to a ~~carrier~~insurer or insurance producer for use in connection with an insurance transaction; or
- (b) the collection of personal or medical information from ~~carriers~~insurers, insurance producers or other insurance support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

~~Insurer, any company as defined in M.G.L. c. 175, § 1 (or any life, health or disability insurance affiliate); any fraternal benefit society as defined in M.G.L. c. 176, § 1; any hospital service corporations defined in M.G.L. c. 176A, § 1; any medical service corporation as defined in M.G.L. c. 176B, § 1; any medical service plan as defined in M.G.L. c. 176C, § 1; any dental service corporation as defined in M.G.L. c. 176E, § 1; any optometric service corporation as defined in M.G.L. c. 176F, § 1; any health maintenance organization as defined licensed under in M.G.L. c. 176G, § 1; any preferred provider arrangement as defined in M.G.L. c. 176I, § 1; and any savings and insurance bank as defined in M.G.L. c. 178A, § 1.~~

MIB, the Medical Information Bureau, Inc., the nonprofit incorporated association which operates an information exchange on behalf of its member life and health ~~carriers~~insurers, and which constitutes an insurance support organization as defined in 211 CMR 36.03.

Positive test result, a positive test result on an ~~AIDS-related~~HIV test.

~~Western blot, an assay which uses reagents consisting of HIV antigens separated by polyacrylamide-gel electrophoresis and then transferred to nitrocellulose paper.~~

36.04: Prohibited Practices

- (1) ~~AIDSHIV~~-related information must be treated as highly confidential. No ~~carrier~~insurer, insurance producer or employee thereof shall communicate information regarding an ~~AIDSHIV-related~~ test, the results of any such test or any other ~~AIDSHIV~~-related information to any person, unless such communication is lawful and such communication is made with the written authorization of the individual to whom the information relates, ~~or unless such communication is required by law without such authorization.~~
- (2) No ~~carrier~~insurer shall request or require that an individual undergo an ~~HIV/AIDS-related~~ test unless the ~~carrier~~insurer has obtained prior written informed consent from the individual in compliance with the requirements of 211 CMR 36.05.
- (3) A ~~carrier~~insurer may request or require an individual to submit to an ~~AIDSHIV-related~~ test only on a basis that is not unfairly discriminatory.
- (4) A ~~carrier~~insurer or insurance producer which learns or has reason to believe that its employee or any other person acting with authority on its behalf has violated the provisions of 211 CMR 36.00 shall immediately investigate the situation and take such prompt disciplinary, enforcement or other corrective action as may be required. ~~Carriers~~Insurers and insurance producers shall maintain records of such violations and the corrective actions taken in a file which shall be made available to the Division of Insurance upon its request.
- (5) A ~~carrier~~insurer or insurance producer shall comply with the procedures and practices set forth when informed consent is obtained pursuant to 211 CMR 36.00.

36.05: Informed Consent

- (1) Before a ~~carrier~~insurer may conduct an ~~AIDSHIV-related~~ test, the individual to be tested must give prior written informed consent to such testing to the ~~carrier~~insurer, laboratories and blood

testing centers or agents in compliance with the requirements of 211 CMR 36.05. Such consent shall be based on an understanding by the individual to be tested that the test is being performed, of the nature of the test, of the persons or entities which will or may have access to the test results or to which the results of that test may be disclosed, of the purpose for which the test results may be used, and of any reasonably foreseeable risks and benefits resulting from the test.

(2) ~~Testing Decision Disclosures.~~ Such informed consent shall include, at a minimum, the following disclosures:

(a) The ~~carrierinsurer~~ shall provide to the individual the following information in writing:

1. notification of the purpose(s) of the ~~AIDSHIV-related~~ test(s), including whether the test is required as a condition of obtaining an insurance benefit;
2. information concerning the effect(s) of the test result(s) on the approval of the application, or the risk classification of the individual;
3. information explaining HIV and AIDS, including without limitation, the following:
 - a. the nature of the ~~AIDS-related~~HIV test(s), including the name(s) of the test(s) to be performed, and the degree of reliability of each of the tests, including the risks of false negative results and false positive results;
 - b. the meaning of the results of the test(s), including the implication of a positive HIV test result for ~~contractingdeveloping~~ AIDS-or-ARC, a description of HIV and AIDS, its major risk groups, symptoms, and the potential for adverse psychological effects to the individual upon being tested and upon learning of a positive test result;
4. a description of the ~~carrier'sinsurer's~~ confidentiality standards and procedures, including full disclosure of any potential use that may be made of the test results or ~~AIDSHIV~~-related information about the individual, and the extent to which the ~~carrierinsurer~~ restricts access to such results and information;
5. a complete description of the persons or entities which may reasonably be expected to have access to the test results or any other ~~AIDSHIV~~-related information about the individual as permitted under 211 CMR 36.00 and the purposes for which such results or information would be provided to such persons or entities;
6. a statement concerning the availability of free, anonymous or confidential ~~AIDSHIV-related~~ testing ~~at the Massachusetts Department of Public Health Alternative Test Sites~~, with the opportunity ~~offor~~ counseling, both pre-test and post-test ~~counselingand the availability of confidential and/or anonymous HIV antibody testing (not blood donation) and counseling for a fee at various locations in Massachusetts by the American Red Cross~~;
7. a statement that the individual may wish to obtain counseling before undergoing the ~~AIDS-related~~HIV test because of the serious nature of HIV and AIDS ~~and ARC~~, and that if an individual waits to sign the consent form for up to 21 days from the date the test was requested by the ~~carrierinsurer~~ or insurance producer, absent changes in underwriting factors, that delay will not prejudice the application for insurance benefits;
8. a statement that HIV/AIDS-related information concerning the individual maintained by the ~~carrierinsurer~~ will be available to the individual directly, or indirectly through a designated physician if preferred by the individual, upon his or her written request, and at no more than the reasonable cost of photocopying; and
9. a statement that if the individual believes that his or her rights concerning the confidentiality of ~~AIDSHIV~~-related information have been violated he or she may contact the Division of Insurance.;

(b) The ~~carrierinsurer~~ shall furnish the individual with a copy of the notice of ~~AIDS-related~~HIV testing and authorization for testing and disclosure, including the signed and dated authorization in conformity with the requirements of 211 CMR 36.05.

(3) Content of the Authorization. An authorization form must contain the following minimum information:

(a) that the authorization to conduct an ~~AIDS-related~~HIV test is valid for a period of not longer than 90 days after the date on which the informed consent form is signed, or for such lesser period as the ~~carrierinsurer~~ may select;

(b) a description of the test protocol, including the name(s) of the test(s) to be performed, the laboratory or laboratories which will conduct the test or which customarily conduct such tests for the ~~carrierinsurer~~, the ~~carrierinsurer~~ which will receive the test results, and the purpose(s) of the test(s);

(c) a statement that the test results will not be released to any person or entity other than those described in the consent form (which persons and entities shall consist only of those persons or entities to which release of such confidential medical information is lawful, ~~and those to whom disclosure without authorization is required by law~~), unless the ~~carrierinsurer~~ obtains the specific prior written consent of the individual, which consent may not be sought in this consent form; further, any statement that information will be shared with the MIB or any other insurance support organization must describe that organization, its policy of disclosure to other ~~carriersinsurers~~, its policy concerning consumer access to information and the process by which consumers can correct inaccurate information, and include that organization's address and telephone number;

(d) a statement that ~~AIDSHIV~~-related information will be disclosed only to persons and entities for which prior written informed consent to the release has been given, ~~or where required by law~~, and that in the event of such a release of ~~AIDSHIV~~-related information concerning the individual to any person or entity other than the ~~carrierinsurer~~, its employees, reinsurers, attorneys, and contractors solely on a need to know bases for use for underwriting, claims or another business purpose in connection with the insurance transaction, or any insurance support organization, the ~~carrierinsurer~~ will notify the individual in writing of the name and address of such person or entity, and subject to 211 CMR 36.05(3)(e), upon the request of the individual, will promptly provide to the individual a copy of the information released at no more than the reasonable cost of photocopying; and

(e) a description of the methods by which the ~~carrierinsurer~~ shall notify the individual of a positive HIV test results, and the time period, which shall be as expeditiously as possible, but in no event later than 45 days after the individual's blood sample is taken, by which such test results will be conveyed in accordance with 211 CMR 36.06. The description shall offer the individual the option to receive the information from a physician he or she designates on the form, or directly from the ~~carrierinsurer~~, and shall inform the individual that such information sent to the physician may become part of the physician's permanent medical record concerning that individual. The individual may change his or her election by so informing the ~~carrierinsurer~~ in writing.

~~(4) Nothing herein shall require such consent or disclosure in connection with any criminal investigation or proceeding, including a grand jury proceeding, a civil commitment proceeding or any other investigation or proceeding where, based on specific information available for review by the Commissioner, there is a reasonable basis for deferring such consent and disclosure pending completion of the investigation or proceeding.~~

~~(5) If applicable, an insurer may use the Model Notice of AIDS Virus Antibody Testing and Authorization for Testing and Disclosure form contained in 211 CMR 36.99 to satisfy the requirements of 211 CMR 36.05(2) and (3).~~

(64) A ~~carrier~~~~insurer~~ ~~shall~~~~may~~ use ~~a another~~ notice of ~~AIDS-related~~HIV testing and authorization for testing and disclosure form that contains at a minimum the information specified in 211 CMR 36.05(2) and (3). Copies of all such forms shall be retained on file by the ~~carrier~~~~insurer~~ and shall be available to the Division upon its request.

36.06: Disclosure of Positive Test Results to Tested Individual

(1) A ~~carrier~~~~insurer~~ which requires or requests that any individual submit to an ~~AIDS-related~~HIV test shall notify that individual of a positive test result as expeditiously as possible, but in no event later than 45 days after the individual's blood sample is taken. Such test result disclosure shall be made in either of the following ways, at the option of the individual:

(a) Notification through the designated physician. A ~~carrier~~~~insurer~~ may encourage an individual to obtain results through his or her physician rather than directly. If the individual selects this option and authorizes disclosure of the positive test result to a physician, and has not informed the ~~carrier~~~~insurer~~ in writing of a revocation of the election, the ~~carrier~~~~insurer~~ shall send the ~~AIDS-related~~HIV test results to the designated physician, together with the following statement regarding the confidentiality of ~~AIDS-related~~HIV test results:

In addition to any current privacy safeguards applying to medical information generally, Massachusetts state law prohibits you from: (1) disclosing the results of ~~AIDS-related~~HIV tests to any person other than the individual tested without first obtaining that individual's written informed consent ~~or~~and (2) identifying the individual tested to any person without first obtaining that individual's written informed consent.

~~The insurer shall also provide the physician information concerning AIDS information resources that the individual may wish to contact for further information about the positive test result. Two resources that insurers may supply are the AIDS Action Line and the Massachusetts Department of Public Health AIDS Information Service.~~

(b) Direct notification to the individual. If the individual selects this option, the ~~carrier~~~~insurer~~ shall mail a certified letter delivered in a plain envelope, marked "Personal and Confidential" to the individual's address. The letter shall include, at a minimum, information concerning HIV and AIDS information resources, available on the Massachusetts Department of Public Health, Office of HIV/AIDS website, that the individual may wish to contact for further information about the positive test result. ~~Two resources that insurers may supply are the AIDS Action Line and the Massachusetts Department of Public Health AIDS Information Service.~~

(2) Any individual shall be entitled, upon request, to receive directly from the ~~carrier~~~~insurer~~ at no more than the reasonable cost of duplicating any such documents, any ~~AIDS~~HIV-related information collected or maintained by the ~~carrier~~~~insurer~~ about that individual and shall not be required to obtain such information indirectly through a physician, other medical provider, the MIB or any insurance support organization or any other mechanism, unless he or she has previously so designated and has not revoked that request in writing.

(3) If any individual, upon receiving copies of such ~~AIDS~~HIV-related information, believes it to be incorrect, he or she may contact the ~~carrier~~~~insurer~~ and seek a correction in accordance with the procedures outlined in the Federal Fair Credit Reporting Act or other applicable provisions of law.

36.07: ~~Carrier~~~~Insurer~~ Confidentiality Requirements

(1) A ~~carrier~~~~insurer~~ shall implement reasonable internal safeguards to protect the privacy of ~~AIDS~~HIV-related information including any request that an individual submit to an ~~AIDS-related~~HIV test, the ~~carrier's~~~~insurer's~~ basis for requesting such a test, any refusal or agreement to

submit to a test, and any ~~AIDS-related~~HIV test result. These internal confidentiality standards shall meet the following minimum requirements:

- (a) the standards shall be in writing, and shall be available to the Division upon request;
 - (b) the ~~carrier/insurer~~ shall designate a specific person(s) to have responsibility for maintaining the confidentiality of AIDSHIV-related information;
 - (c) each employee, insurance producer or other person or entity authorized to act on behalf of the ~~carrier/insurer~~ who may have access to AIDSHIV-related information shall be informed in writing of the ~~carrier's insurer's~~ confidentiality standards to the extent reasonably necessary to protect the confidentiality of the AIDSHIV-related information;
 - (d) the standards shall specify that no person shall have access to AIDSHIV-related information except those persons designated in accordance with 211 CMR 36.00;
 - (e) the standards shall ensure that AIDSHIV-related information, whether stored in electronic or paper format, that is stored in a computer data bank or other files is protected by reasonable security safeguards; and
 - (f) the standards shall ensure that AIDSHIV-related information shall be accessible only to the minimum necessary number of those persons or entities designated to have access pursuant to 211 CMR 36.05(2)(a)4., 5. and 36.05(3)(c) and (d).
- (2) ~~Carriers/Insurers~~ shall be required to notify an individual of any disclosure of AIDSHIV-related information to any of the designated persons or entities other than the ~~carrier/insurer~~, its employees, reinsurers, attorneys, and contractors solely on a need to know basis for use for underwriting, claims or another business purpose in connection with the insurance transaction, or any insurance support organization. This disclosure shall include the name and address of the person or entity receiving the information. Individuals should be informed of this policy pursuant to 211 CMR 36.05(3)(d).
- (3) A ~~carrier/insurer~~ or insurance producer shall, ~~subject to the provisions of 211 CMR 36.05(4)~~, be required to notify an individual of any subpoena for the company's records relating to AIDSHIV-related information concerning that individual, which notice shall be given as soon as possible, and before responding to the subpoena with an opportunity for the individual to object to such disclosure where practicable.
- (4) A ~~carrier/insurer~~ or insurance producer may be subject to sanctions by the Division in the event of any breach of confidentiality made by any person or entity acting on its behalf, including without limitation, any laboratory, contractor whose purpose is to provide underwriting or claims services in connection with the insurance transaction, insurance support organization, reinsurer or attorney.

36.08: Applications

- (1) ~~Carriers/Insurers~~ and insurance producers are prohibited from requesting any information related to (a) counseling about HIV or AIDS ~~or ARC~~, or (b) the sexual orientation of the individual, or any applicant, proposed insured, policyholder or beneficiary, including questions relating to proxies for sexual orientation.
- (2) A ~~carrier/insurer~~ may request an individual to disclose whether he or she has received a positive ~~AIDS-related~~HIV test result (other than an anonymous result obtained ~~under the auspices of the Alternative Testing Sites of~~ through an HIV counseling and testing site ~~the Massachusetts Department of Public Health or the American Red Cross~~), whether he or she has received a medical diagnosis of, or medical treatment for HIV infection or AIDS ~~or ARC~~ by a medical professional, and information about such diagnosis or treatment.
- (3) ~~Carriers/Insurers~~ are permitted to ask questions on application forms that are diagnostic or factual in nature, concerning whether an individual has been diagnosed or treated for HIV infection or AIDS ~~or ARC~~. Questions that are subjective, vague, unfairly discriminatory, overly technical or that ask for the applicant's opinion ~~will not be~~ are not permitted.

36.09: Penalties

(1) A violation of any provisions of 211 CMR 36.00 by any ~~carrierinsurer~~, insurance producer or employee, authorized agent or representative thereof, shall be considered to be an unfair or deceptive act or practice on the part of such ~~carrierinsurer~~, insurance producer or employee in violation of M.G.L. c. 176D.

(2) A violation of any provision of 211 CMR 36.00 by any ~~carrierinsurer~~, insurance producer or employee or authorized agent or representative thereof may be grounds for the imposition of sanctions upon such ~~carrierinsurer~~, insurance producer or employee including without limitation, suspension or revocation of the license of such person or entity.

36.10: Severability

If any section or portion of a section of 211 CMR 36.00 or the applicability thereof to any person, entity or circumstance is held invalid by a court, the remainder of 211 CMR 36.00 or the applicability of such provision to other persons, entities or circumstances shall not be affected thereby.

36.11: Effective Date

~~This effective date of 211 CMR 36.00 is November 1, 1989.~~

36.12 to 36.98: Reserved

36.99: Appendix

[Cover page to notice]
NAME AND ADDRESS OF INSURANCE COMPANY
NOTICE OF AIDS VIRUS ANTIBODY TESTING
AND AUTHORIZATION
FOR TESTING AND DISCLOSURE

~~This document contains important information concerning the AIDS virus antibody test that we require you undergo to apply for insurance with us. It also contains information about who will have access to the information we obtain.~~

~~READ THIS NOTICE VERY CAREFULLY. DO NOT SIGN IT UNLESS IT IS COMPLETELY FILLED OUT AND YOU HAVE READ AND UNDERSTOOD IT.~~

~~You have up to 21 days from the date you receive this form to decide whether to sign this authorization.~~

~~MODEL NOTICE OF AIDS VIRUS ANTIBODY TESTING AND AUTHORIZATION FOR
TESTING AND DISCLOSURE~~

~~In connection with your insurance, your blood sample will be tested for the presence of the AIDS virus (HIV) antibody. Before consenting to this test, you are urged to read the following information about AIDS, the nature of the test and our policy concerning confidentiality of test and other AIDS-related information. After you read this material, you will find a request for your written authorization to be tested for the AIDS virus and for subsequent disclosure of test results. You should be aware that a positive test result [will/may] result in the denial of your insurance application.~~

~~INFORMATION ABOUT AIDS~~

AIDS is a condition caused by the human immunodeficiency virus (HIV). In some individuals the virus reduces the body's normal defense mechanisms against certain diseases or infections. As a result, such people often develop such unusual conditions as severe pneumonia or a rare skin cancer. The symptoms of AIDS may include the following, although other causes of these symptoms are more likely: unexplained weight loss; persistent night sweats, cough, shortness of breath, diarrhea and white spots evidencing fungal infection; fever and swollen lymph nodes lasting more than one month; and raised purple spots on or under the skin or on mucous membranes.

From medical studies, it is clear that the following groups are at a high risk of contracting AIDS:

- * Past or present users of intravenous drugs;
- * Males who have had sex with more than one male since the late 1970's;
- * Recipients of blood or blood products infected by the HIV virus; and
- * Sexual partners of individuals belonging to any of the above categories.

HIV ANTIBODY TEST

The HIV antibody test is actually a series of tests designed to detect the presence of antibodies to the AIDS virus rather than detect the virus itself. Antibodies to the AIDS virus are found in the blood of most patients with AIDS and AIDS-related complex (ARC), and can be found in people who do not have AIDS or ARC but have been exposed to the virus.

Your blood sample will first be subjected to a test known as ELISA (enzyme-linked immunosorbent assay). If the result of this test is positive, the ELISA test will be repeated. If this repeat ELISA test is also positive, your blood specimen will then be subjected to another, more specific technique called the Western blot test, for confirmation. Your test result is considered positive only after positive results are obtained on two ELISA tests and a Western blot test.

Positive Test Results. In general, if you receive such a positive test result, there is a high probability that you have HIV antibodies in your blood. However, there is a risk that a person who has not been exposed to the virus will be incorrectly classified by the test as having a positive test result. This is called a "false positive" result. People who are not in one of the "high risk" groups listed above who get a positive test result are much more likely to receive a "false positive" than those who are in a high risk group.

A positive test result does not mean that you have AIDS. The diagnosis of AIDS is established using a patient's history, symptoms and physical examination. A positive test result does mean, however, that you are at risk of developing AIDS or AIDS-related conditions. It also means that, without taking precautions, you may transmit the virus to other people. Therefore, the following steps are recommended to limit the spread of AIDS: (1) stop donating blood; (2) limit sexual contacts and follow "safe sex" practices; (3) inform your sexual partners; (4) notify your doctor; and (5) if you are considering having a child, carefully evaluate the risks to the fetus.

If your test result is positive, the test result will be sent to the doctor you designate on this form, or if you prefer, we will mail the result directly to you no later than 45 days after your blood sample is taken. It is strongly recommended that you consult a physician or obtain counseling to learn more about the meaning of such a result.

Negative test results. If your test result is not positive, you most likely have not been infected by the virus. However, it is possible to have been infected with the virus within the past year and not yet

have developed antibodies that cause a positive test result. It is possible to receive a "false negative" result.

COUNSELING AND ALTERNATIVE TEST SITES

You may experience increased anxiety as a result of having this test performed or receiving a positive test result. Many public health organizations recommend that before a person takes an AIDS-related test, he or she obtain counseling about the test and about AIDS. A source of information about AIDS and counseling is the AIDS Action Line. In addition, the Massachusetts Department of Public Health offers free anonymous HIV antibody testing, with pre-test and post-test counseling at its Alternative Test Sites. For additional information regarding AIDS, AIDS testing or counseling, or to obtain a free, anonymous test, individuals in the high risk categories listed above are encouraged to contact the Massachusetts Department of Public Health, Alternative Test Sites for an appointment. Confidential and/or anonymous HIV antibody testing (not blood donation) and counseling is also available at various locations in Massachusetts for a fee of \$35 by appointment with the American Red Cross.

If you wait up to 21 days from the date you receive this form to decide whether to be tested, unless other circumstances relating to your eligibility change, this delay will not affect our decision to offer you insurance.

CONFIDENTIALITY

Under Massachusetts law we must treat all AIDS-related information (including test results) as highly confidential. We have established safeguards within our company that will protect the privacy of any AIDS-related information that is in your files. We have designated [an employee/employees] who are responsible for keeping this information confidential. We have designated certain personnel who will have access to AIDS-related information if they need the information in connection with an insurance transaction. Other personnel are aware that they are not permitted access to such information. We will make sure that AIDS-related information that is stored in a computer data bank or other files is protected by reasonable security safeguards.

To handle your insurance business, we [will/may] need to disclose your test results or other AIDS-related information to [identify those who will have such access, e.g., "employees, reinsurers, contractors or attorneys who need AIDS-related information for underwriting, claims or another necessary business purpose in connection with your insurance transaction"]. These persons and entities have been informed of their clear legal obligation to maintain the confidentiality of all AIDS-related information, including test results. Similar privacy safeguards have also been adopted by the laboratory that will perform tests on your blood sample, and by any contractor, reinsurer or attorney to whom we might grant access to AIDS-related information. If we need to disclose to anyone else information about you and AIDS, we must again ask you to provide prior written consent to such disclosure. However, AIDS-related information could be disclosed without your consent in response to a subpoena. If you believe that your right to the confidentiality of any AIDS-related information about you has been violated, you should contact the Division of Insurance by writing to the Division's Consumer Services Section, 470 Atlantic Ave, Boston, MA 02210-2223.

Medical Information Bureau (MIB). If your test result is positive, we will make a report indicating a nonspecific abnormal blood test result to the Medical Information Bureau, Inc. (MIB). The nature of the test will not be reported; there will be no record with the MIB that you had a positive HIV

antibody test. The MIB is a nonprofit organization of life insurance companies which operates an information exchange for its members. Our decision on whether or not to issue you a policy will not be sent to the MIB. If you later apply to another MIB member company for life or health insurance or submit a claim for life or disability insurance benefits, the MIB will, upon request, provide that company with information in its file, including information we have furnished. Otherwise the MIB will observe confidentiality safeguards similar to our own stated above. Upon your request, the MIB will arrange for disclosure to you of any information it has in your file. If you feel the information in the MIB's file is not correct, you may contact the MIB and seek a correction in accordance with the procedures outlined in the Federal Fair Credit Reporting Act. The address of the MIB's information office is: MIB, Inc., P.O. Box 105, Essex Station, Boston, MA 02112. The MIB telephone number is (617) 426-3660.

DISCLOSURE AND ACCESS TO INFORMATION

If we disclose any AIDS-related information to a person or entity who is not our employee, reinsurer, attorney, or contractor as described above, or the MIB, we will notify you in writing unless we are prohibited from doing so by law or court order. Upon your written request, we will provide you, either directly, or at your option, through a physician designated by you, with copies of any information relating to you and AIDS in our files, for the reasonable cost of photocopying those documents. If you believe any of the information in our files is incorrect, you may write to us to request that it be corrected.

AUTHORIZATION

I have read and understand this Notice of AIDS Virus Antibody Testing and Authorization for Testing and Disclosure. I understand that: if I test positive I [will/may] be denied the insurance for which I have applied; I may experience increased anxiety as a result of having this test; the people and entities described above will or may have access to the results of my test as stated above for the purposes identified on this form; I will be given a copy of this form; and this authorization is valid for 90 days from the date of my signature below.

I authorize the drawing and testing of my blood for HIV antibodies and the disclosure of the test results as stated on this form.

NOTIFICATION OF POSITIVE TEST RESULT

In the event of a positive test result:

_____ please send the result to me at:

(Address) _____

_____ I authorize (name of insurer) to send the result to my physician and understand that such results may become part of my physician's permanent medical records concerning me:

(Physician's Name) _____

(Physician's Address) _____

Date: _____ Name of Individual _____

Signature of Individual _____

Signature of Legal _____

Date: _____ Guardian, if any _____

~~[Names and Addresses of the following: Insurance producer if applicable; person administering test or delivering this form; laboratory where test will be conducted or the laboratories customarily used by insurer]~~

~~NOTE TO INSURERS: If certain factual matters recited in this form change, you should revise the form accordingly, as long as the form continues to contain the information required in 211 CMR 36.05. For example, if you decide to implement a test protocol other than the one specified in this form, you should revise the description of the test protocol on the form to correctly reflect your practices.~~