



## Insurance Law and HIV/Aids –A Deliberation

\*<sup>1</sup>S.Sreenivasa Rao

\*<sup>1</sup>Research Scholar, Dr.B.R.Ambedkar College of Law,Andhra University, Visakhapatnam,India.

Note: \* Indicates corresponding author

ARTICLE DETAILS	ABSTRACT
<p><b>Article History:</b> Received Date: 11/02/2019 Revised Date: 23/02/2019 Accepted Date: 25/02/2019 e-First: 10/03/2019</p> <hr/> <p><b>Keywords</b> Insurance, spouses. seropositive</p> <hr/> <p><b>*Corresponding Author</b> (Sreenivasa Rao,S)</p>	<p>Insurance is an important necessity ,especially in a free market, industrialized society . To HIV seropositive individuals, insurance is crucial, not only in order to obtain medical care , but also to pay one's debts after death and provide for spouses and children . This compares the problem of insurance related to hiv seropositive primarily in the united states ,Europe and certain African and Asian countries .Hopefully by comparing different systems one may learn to resolve the hiv seropositive insurance issue better in one's own country.</p>

### 1. Introduction

AIDS creates numerous issues for the insurance industry. In the United States , a significant production of health care costs a are paid for by private insurance companies through employment –related group insurance plans or through individual health policies .Employment Related and individual life insurance policies are intended to reflect past experience on mortality rates. This experience of course , has been drastically altered by AIDS. Health insurance policies had been designed based on assumptions that excluded newly discovered infectious diseases with expensive experimental treatments . some companies such as blood banks , also may incur liability due to AIDS that may be covered by liability insurance policies.' Finally ,it has even been suggested that individuals who transmit AIDS to others and are held liable may be covered under existing homeowner or apartment dweller policies.<sup>1</sup>

### 2. Health insurance

#### 1 U.S.

Because of the High risk of private health insurance , it is essential that employees , especially those with HIV, belong to some work place health plan. While many states have protected HIV seropositive employees from insurance work place discrimination . It was unpredictable that the Employee Retirement Income Security Act of 1974 (ERISA), a law designed to protect employment benefits, could be judicially interpreted to virtually eliminate HIV seropositive insurance protection. whether the Americans with Disabilities Act (ADA) will restore such protection is still uncertain , although the federal administrative agency enforcing the ADA has clearly indicated that discrimination based on HIV is Not only a violation of the ADA ,but will result in financial penalties against the entity responsible for such discrimination,

### 3. Cost and treatment

Hiv infection is an expensive proposition. Although advances in treatment since the beginning of the epidemic have reduced the amount of time that persons with AIDS have to spend in hospitals. Some of the newly discovered treatments are themselves very expensive. since there is as yet no cure for the underlying immune deficiency caused by AIDS, those diagnosed with the syndrome may expect to require medical treatment for the rest of their lives, the longer that life is prolonged by treatment , the higher the total cost of treatment.

An early study of the medical bills of AIDS patients produced a starting average figure per case of about \$147,000. This figure recurs in published writing about AIDS and insurance ,but is no longer realistic given the above developments. More recent research has shown that AIDS is about as expensive as other serious life threatening illnesses ,such as leukemi and lung cancer, in common with other serious illnesses, AIDS may require some periods

of hospitalization and expensive drug therapies, and does result in a degenerative curve that affects employability. The costs of AIDS treatment vary widely depending upon the location where treatment occurs and the particular opportunistic infections experienced by the individual.<sup>2</sup>

Those who acquire HIV infection through shared injection equipment tend to develop serious medical complications more quickly, to require more hospitalization and to die relatively quickly at least partly due to likelihood that their living conditions were less healthful prior to acquisition of infection so their bodies are less able to handle the infection. Due to the demographic considerations, those who acquire HIV infection through sexual contact with drug users follow the same patterns.

Increasingly, however, companies are turning to self-funded insurance programmes regulated by ERISA which preempted state regulations. In fact by 1995, over 65 percent of (US) workers who are provided health benefits are in self-insured plans.

This federal law was passed long before HIV was an issue, and its purpose was partly to protect employees' pensions and health benefits granted by an employer. While ERISA created substantive regulations covering pension plans it did not create the same for welfare plans. It has come under judicial criticism, especially when applied to health care plans and HIV.

Judicial decisions under ERISA have often been unfavourable to persons with AIDS (PWA) under ERISA. There is no specification as to what the standard of review should be concerning the determination by an administrator in self-funded plans. In *Kennedy v. System One Holdings*, the HIV seropositive former employer claimed that he was misled by the employer and plan administrator as to the allowed time to recover long-term disability benefits under the company welfare plan. One factor in granting the defendant summary judgment was that courts will defer to the plan administrator's factual determination unless there is an abuse of discretion.<sup>3</sup>

#### 4. The American with disabilities act

The American Disabilities Act (ADA) of 1990 extended certain antidiscrimination provisions of the 1964 civil rights act to disabled persons. In 1991 a protected individual pursuant to a graduated damages provision could obtain a maximum award of \$300,000. The ADA became effective for all employers with 25 or more employees on 25th July 1992 and for employees with 15 to 24 employees on 26th July 1994. While the ADA does not mention HIV its congressional history and court decisions have concluded that even asymptomatic HIV seropositive has protection under the ADA. The Equal Employment Opportunity Commission (EEOC) is the federal administrative agency responsible for the enforcement of much of the ADA, and its regulations are generally given significant deference by federal courts. Should EEOC determine that an employer's HIV benefits policy is in violation of the ADA, it may obtain relief only through litigation in a federal court if settlement attempts fail.<sup>4</sup>

#### 5. The private sector

In the United States, individuals employed in the private sector normally pay for their medical expenses through employment-related insurance. Most employees enroll their employees in group insurance plans that may also provide coverage for the dependent family members of employees. Some employees pay the full cost of insurance for their employees, although increasingly employers are requiring employees to contribute through pay roll deductions. Employees are normally required to pay extra to obtain coverage for their dependents. Under federal law, most employees and their dependents are eligible when their employment ends to constitute participating in the group health plans for a specified time.

#### 6. Jurisdiction

It appears that self-funded plans are jurisdictionally subject to the ADA. In *Corporate Distributive Automotive Wholesalers*, the court concluded that the ADA did cover a self-funded medical reimbursement plan. The plaintiff who also was the shareholder of Carparts had enrolled in 1987 in the plan of Automotive Wholesale Association of New England, which sponsored a self-funded health benefit plan. The plaintiff was diagnosed HIV seropositive in 1986 but a lifetime cap of \$25,000 for HIV was established effective from 1991, which left \$1 million for other illnesses. The district court concluded that the defendant was neither an employer nor a public accommodation within the meaning of the ADA. The court reversed by concluding that the plan had the authority to determine the level of benefits and this was an employer subject to Title I of the ADA, and that the plaintiff might have a possibility of showing that the defendant is a public accommodation, and therefore subject to Title III of the ADA.<sup>5</sup>

The legal status of testing was a matter of some doubt for several years during the 1980s. When laws in some states prohibited HIV antibody by insurers and several state insurance commissioners promulgated regulations for bidding testing, As HIV testing became more familiar and even common place as a laboratory procedure. However the industry was able to convince legislators and judges to reconsider the issue. Absolute bans on testing for insurance purposes were repealed in California and the District of Columbia and the state health commissioner in Wisconsin certified that HIV antibody testing was reliable enough for underwriting purposes to comply with as state law on aids,<sup>6</sup>

Legislations and regulations regarding HIV antibody testing by insurance companies now focus on procedural issues. The most frequent topics covered are confidentiality of test results, informed consent to testing, and requirements for appropriate counseling to accompany testing. For example, a 1989 amendment to New York's insurance law requires insurance companies to get specific written consent from applicable for HIV antibody testing, the consent form must describe the test and its meaning and contain instructions for obtaining appropriate information and counseling about aids.<sup>7</sup>

## 7. Insurance as a public accommodation

In some states, the sale of insurance is treated as public accommodation subject to laws that forbid discrimination in the provisions of such accommodations. Other states do not so classify the sale of insurance, thereby leaving it outside the discrimination prohibitions of existing civil rights laws, the American with disabilities act of 1990 contains provisions that specifically leave to the states the authority to regulate insurance and indicate that it shall not be construed to interfere with traditional underwriting practices or change the preemption of potential state relations of self insured employers by federal law.<sup>8</sup>

### 7.1 Public sector

Most health insurance coverage in the United States is obtained through private insurance companies by individual payment of premium or through group health plans sponsored by employers for their employees. Those who do not qualify to participate through employment and cannot afford to purchase individual policies must rely on their own resources or government programs to pay for health care. It is estimated that as many as 37 million Americans are without any form of health insurance coverage. These people must rely on public health clinics or public hospital emergency rooms.

Medicaid is a means tested entitlement programme. As such not everyone may participate. Only those incomes fall below a certain threshold and who fit into one of the authorized categories for coverage are entitled to benefits, and the level of benefits, set on a state by state basis depending upon what the state is willing to pay, is usually far less generous than what is available under Medicare or private insurance plans, consequently, the standard of care for individuals who rely on Medicaid reimbursement is significantly inferior to what is generally available to those who can afford other programs,<sup>9</sup>

Federal officials have made the Medicaid program generally available to persons with AIDS of limited means by issuing interim regulations that treat a diagnosis of AIDS as defined by the United States Centers for Disease Control (CDC) as a presumptively disabling condition since one of the eligible conditions for Medicaid coverage is persons with disability conditions this is a major step toward expanding and simplifying access to Medicaid coverage. require that individuals spend down their assets before they can qualify. In addition, the adoption of a certified diagnosis of CDC defined AIDS leaves out many HIV infected asymptomatic persons because the CDC function excludes a number of the medical conditions commonly found in drug users. This is so because the CDC's definition was arrived at earlier in the epidemic based on a study of cases gay men, homeophiliacs, and transfusion recipients.<sup>10</sup>

## 8. Conclusion

Insurance companies are, of course, in business to make a profit. All countries, however impose a specially high standard by the insurers. For insurers to simply refuse to insure people with different life styles is not only unfair, but irrational. Concerning individuals with HIV, governmental subsidy of insurance for PWA would be ideal because many people who are asymptomatic have many long years ahead of them. In most countries, such a suggestion would be considered unrealistic. Certainly for society to do nothing means that HIV seropositive individuals are forced

to rely totally on charity or on programmes such as Medicaid in the united states. not offering hiv seropositive persons early medical care , society will pay much more through 'programmes such as Medicaid.

#### REFERENCES

- 1) Ruth E.kim A ND KINMBII RR.Mcmullin.Aids and the insurance industry ,an evolving resolution of conflicting interests and rights st.louisu publ rev155,1551998.
- 2) Aids in a nut shell, et al Robert M.jarvis, Mechael L.Closen, Donald H,Jj.Hermann, Arthur S.Leonard. (ST,PAUL.MINN,west publishing compsn1991.
- 3) *ibid.*
- 4) Prostitution and Beyond ;An analysis of the work in India et al(Rohini sahini,V.Kalyan Shanker and Hemanth Apte (sage publications in india ,2008).
- 5) itechnical report national commission on 'aids at 17 august191.
- 6) HIV/AIDS, Law Ethics and Human rights(Digumurti Bhaskara Rao ,Discovery Publishing Hou se New Delhi,2000).
- 7) *ibid.*
- 8) Masontendersv donaghey , 1993 us distlexis 170329.
- 9) Masen tenders supra 34.
- 10) british medical journal,1003 june5.