EARL R. POMEROY
COMMISSIONER OF INSURANCE
STATE OF NORTH DAKOTA
STATE CAPITOL
BISMARCK, NORTH DAKOTA 58505
701 - 224 - 2440

BULLETIN 90-2

TO: All Insurers Writing Life and/or Health Business

FROM: Earl R. Pomeroy, Commissioner

DATE: July 17, 1990

SUBJECT: 1. Notice, Consent, and Disclosure for Testing of Blood or Other Body Fluids (N.D. Admin. Code Chapter 45-03-11)

2. Life and Health Insurance Guaranty Association Notice of Policy Coverage (N.D. Admin. Code Chapter 45-11-01)

The above forms have been adopted by the North Dakota Insurance Department and are hereby prescribed for use by all companies who write life and/or accident and health insurance in North Dakota.

The "informed consent" form which is part of N.D. Admin. Code § 45-03-11-03 is required to be signed by insurance applicants when underwriting requirements include testing for HIV antigens. This rule became effective July 1, 1990.

The North Dakota Life and Health Guaranty Association "Notice to Policyholders" is mandated by N.D.C.C. § 26.1-38.1-16(2) and required upon delivery of a policy or upon request, effective July 1, 1990.

I am requesting that all companies comply with these new requirements as soon as administratively possible.

ERP/njb
Attachments

CHAPTER 45-03-11
NOTICE, CONSENT, AND DISCLOSURE FOR TESTING OF BLOOD OR OTHER BODY FLUIDS

Section	
45-03-11-01	Definitions
45-03-11-02	Requirement for Informed Consent and Disclosure
45-03-11-03	Prescribed Form of Informed Consent
45-03-11-04	Informed Consent - Legal Requirements
45-03-11-05	Notification of Test Results

45-03-11-01. Definitions.

1. "Informed consent form" means a printed document on which an individual may signify that individual's informed consent for testing for the presence of an antibody to the human immunodeficiency virus or authorize the disclosure of any test results obtained.

2. "Informed consent for testing or disclosure" means written consent on an informed consent form by an individual to the administration of a test to that individual for the presence of an antibody to the immunodeficiency virus or to the disclosure to a specified person of the results of a test administered to the consenting individual.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

45-03-11-02. Requirement for informed consent and disclosure. Any insurance company, health maintenance organization, fraternal benefit society, benevolent society, or nonprofit health service corporation conducting business in this state which requests its applicants for insurance coverage to provide a body fluid sample for the purpose of testing and analysis which may include testing to determine the presence of antibodies or antigens to the human immunodeficiency virus (HIV), also known as the AIDS virus, as part of its underwriting process, shall, prior to any such testing, obtain from the applicant the applicant's informed consent for testing or disclosure of the test results as provided under section 45-03-11-04.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

45-03-11-03. Prescribed form of informed consent. Any insurance company, health maintenance organization, fraternal benefit society, benevolent society, or nonprofit health service corporation which subjects an applicant for insurance coverage to a test for the presence of an antibody or antigen to the human immunodeficiency virus under section 45-03-11-02 shall provide the applicant with an informed consent form and shall obtain the applicant's signature on the form. The form must contain at least the following language printed in type no smaller than ten point, and must take substantially the following form:

EXAMINER _____ INSURER _____
ADDRESS _____ ADDRESS _____

NOTICE AND CONSENT FOR BLOOD (OR OTHER BODY FLUID)
TESTING AND DISCLOSURE WHICH MAY INCLUDE AIDS VIRUS (HIV)
ANTIBODY/ANTIGEN TESTING

To determine your insurability, the Insurer named above (the Insurer) has requested that you provide a sample of a body fluid for testing and analysis. All tests will be performed by a licensed laboratory.

Tests may be performed to determine the presence of antibodies or antigens to the Human Immunodeficiency Virus (HIV), also known as the AIDS virus. Other tests which may be performed include determinations of blood cholesterol and related lipids (fats) and screening for liver or kidney disorders, diabetes, and immune disorders.

CONFIDENTIALITY

All test results will be treated confidentially. The results of tests will be reported by the laboratory to the Insurer identified on this form. When necessary for business reasons in connection with insurance you have or have applied for with the Insurer, the Insurer may disclose test results to others such as its affiliates, reinsurers, employees, or contractors to whom disclosure is reasonably necessary in the ordinary course of business to carry out the purpose for which that disclosure is authorized. If the Insurer is a member of the Medical Information Bureau (MIB, Inc.), and if the test results for HIV antibodies/antigens are other than normal, the Insurer will report to the MIB, Inc., a generic code which signifies only a nonspecific test abnormality. If your HIV test is normal, no report will be made about it to the MIB, Inc. Other test results may be reported to the MIB, Inc., in a more specific manner. The organizations described in this paragraph may maintain the test results in a file or data bank. There may be other disclosure of test results as permitted by law or authorized by you.

NOTIFICATION OF RESULTS

If your HIV test results are normal, no routine notification will be sent to you. If you are a resident of North Dakota and your HIV test is other than normal, the Insurer will disclose test results to the North

Dakota Department of Health and Consolidated Laboratories as required by law. If the HIV test results are other than normal, the North Dakota Department of Health and Consolidated Laboratories will contact you.

SIGNIFICANCE OF POSITIVE TEST RESULTS AND AFFECT ON APPLICATION FOR INSURANCE

Positive HIV antibody/antigen test results do not mean that you have AIDS, but that you are at significantly increased risk of developing AIDS or AIDS-related conditions. Federal authorities say that persons who are HIV antibody/antigen positive should be considered infected with the AIDS virus and capable of infecting others.

Positive HIV antibody or antigen test results or other significant blood abnormalities will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary.

I have read and I understand this Notice of Consent for Blood (or Other Body Fluid) Testing and Disclosure which may include HIV antibody/antigen testing. I voluntarily consent to the testing of my blood or other body fluids and the disclosure of the test results as described above.

I understand that I have the right to request and receive a copy of this authorization. A photocopy of this form will be as valid as the original.

Proposed Insured (print)	Date of Birth

Signature of Proposed Insured or Parent/Guardian	Date	State of Residence

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

45-03-11-04. Informed consent - Legal requirements. The form prescribed in section 45-03-11-03 is not in lieu of any legal requirements applicable to persons drawing or testing blood for human immunodeficiency virus to obtain informed consent for testing or disclosure.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

45-03-11-05. Notification of test results. If the results of testing subject to this chapter are other than normal, the insurer shall notify the North Dakota department of health and consolidated laboratories. The written notification must indicate the specific nature of the abnormal test results and must also indicate all persons to whom the test results have been disclosed. The notice must also inform the department of the specific tests and procedures used to determine the proposed insured as an other than normal test result.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

ARTICLE 45-11
LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

A new article to Title 45 of the North Dakota Administrative Code related to the Life and Health Insurance Guaranty Association, as follows:

ARTICLE 45-11

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

CHAPTER 45-11-01
ADVERTISING RULES

45-11-01-01. Required disclaimers.

1. **General notice of policy coverage.** The document, required under subsection 2 of North Dakota Century Code section 26.1-38.1-16 to be delivered to policyholders of policies or contracts described in subsection 2 of North Dakota Century Code section 26.1-38.1-01, related to the description of the general purposes and current limitations of the North Dakota life and health insurance guaranty association, must be in the same form and contain the language printed in the Notice Concerning Coverage Limitations and Exclusions Under the North Dakota Life and Health Insurance Guaranty Association Act shown in exhibit A.

2. **Notice of noncoverage.** Each notice which is delivered to a policyholder by an insurer or agent pursuant to and required to be delivered by subsection 4 of North Dakota Century Code section 26.1-38.1-16 must be in the same form and contain the language printed in the Notice Concerning Coverage Limitations and Exclusions Under the North Dakota Life and Health Insurance Guaranty Association Act shown in exhibit A.

History :
General Authority: N.D.C.C. Section 26.1-38.1-16
Law Implemented : N.D.C.C. Section 26.1-38.1-16

Notice Concerning Coverage Limitations and Exclusions under the North Dakota Life and Health Insurance Guaranty Association Act

Residents of North Dakota who purchase life insurance, annuities or health insurance should know that the insurance companies licensed in this state to write these types of insurance are members of the North Dakota Life and Health Insurance Guaranty Association. The purpose of this association is to assure that policy-holders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this should happen, the guaranty association will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the guaranty association is not unlimited, however. And, as noted in the box below, this protection is not a substitute for consumers' care in selecting companies that are well-managed and financially stable.

The North Dakota Life and Health Insurance Guaranty Association may not provide coverage for this policy. If coverage is provided, it may be subject to substantial limitations or exclusions, and require continued residency in North Dakota. You should not rely on coverage by the North Dakota Life and Health Insurance Guaranty Association in selecting an insurance company or in selecting an insurance policy.

Coverage is *NOT* provided for your policy or any portion of it that is not guaranteed by the insurer or for which you have assumed the risk, such as a variable contract sold by prospectus.

Insurance companies or their agents are required by law to give or send you this notice. *However, insurance companies and their agents are prohibited by law from using the existence of the guaranty association to induce you to purchase any kind of insurance policy.*

The North Dakota Life and Health Insurance Guaranty Association
P.O. Box 8875
Fargo, North Dakota 58109-8875

State of North Dakota Department of Insurance
600 East Blvd. Avenue
Bismarck, North Dakota 58505

The state law that provides for this safety-net coverage is called the North Dakota Life and Health Insurance Guaranty Association Act. On the back of this page is a brief summary of this law's coverages, exclusions and limits. This summary does not cover all provisions of the law; nor does it in any way change anyone's rights or obligations under the act or the rights or obligations of the guaranty association.

(please turn to back of page)

COVERAGE

Generally, individuals will be protected by the life and health insurance guaranty association if they live in North Dakota and hold a life or health insurance contract, annuity contract, or if they are insured under a group insurance contract, issued by a member insurer. The beneficiaries, payees or assignees of insured persons are protected as well, even if they live in another state.

EXCLUSIONS FROM COVERAGE

However, persons holding such policies are **not** protected by this association if:

- they are eligible for protection under the laws of another state (this may occur when the insolvent insurer was incorporated in another state whose guaranty association protects insureds who live outside that state);
- the insurer was not authorized to do business in this state;
- the policy is issued by an organization which is not a member of the North Dakota Life and Health Insurance Guaranty Association.

The association also does **not** provide coverage for:

- any policy or portion of a policy which is not guaranteed by the insurer or for which the individual has assumed the risk, such as a variable contract sold by prospectus;
- any policy of reinsurance (unless an assumption certificate was issued);
- interest rate yields that exceed an average rate;
- dividends;
- credits given in connection with the administration of a policy by a group contractholder;
- employers' plans to the extent they are self-funded (that is, not insured by an insurance company, even if an insurance company administers them).

LIMITS ON AMOUNT OF COVERAGE

The act also limits the amount the association is obligated to pay out: The association cannot pay more than what the insurance company would owe under a policy or contract. Also, for any one insured life, the association will pay a maximum of $300,000 - no matter how many policies and contracts there were with the same company, even if they provided different types of coverages. Within this overall $300,000 limit, the association will not pay more than $100,000 in cash surrender values, $100,000 in health insurance benefits, $100,000 in present value of annuities, or $300,000 in life insurance death benefits - again, no matter how many policies and contracts there were with the same company, and no matter how many different types of coverages.

Note to benefit plan trustees or other holders of unallocated annuities (GICs, DACs, etc.) covered by the act: for unallocated annuities that fund governmental retirement plans under §§401(k), 403(b) or 457 of the Internal Revenue Code, the limit is $100,000 in present value of annuity benefits including net cash surrender and net cash withdrawal per participating individual. In no event shall the association be liable to spend more than $300,000 in the aggregate per individual; for covered unallocated annuities that fund other plans, a special limit of $5,000,000 applies to each contractholder, regardless of the number of contracts held with the same company or number of persons covered. In all cases, of course, the contract limits also apply.