

K.A.R. 40-1-36. Life and health insurance applications; underwriting; acquired

immunodeficiency syndrome (AIDS); ~~defined~~definitions. (a) As used in this regulation, ~~these~~each of the following terms shall have the ~~following meanings~~meaning specified in this subsection:

(1) "Acquired immunodeficiency syndrome ~~(AIDS)~~" ~~means~~and "AIDS" mean one or more opportunistic diseases ~~which~~that 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), and amendments thereto.~~

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

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

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

(A) Obtain written informed consent from the applicant;

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

(C) (i) Provide the applicant with printed material ~~prior to~~before testing containing factual information describing AIDS, its causes, symptoms, ~~how~~the ways it is and can be spread,

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the tests used to detect the HIV antibody and ~~what~~the actions to take for a person should do whose test results are positive; or;

(ii) 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~~that 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), or any other confirmatory test approved by the food and drug administration of the federal department of health and human services in accordance with current centers for disease control and prevention guidelines and protocols, 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), and amendments thereto.

(2) ~~Insurers~~An insurer may ask diagnostic questions on ~~application~~each application for insurance.

(3) Each application question shall be ~~formed~~worded in a manner designed to elicit specific medical information and not lifestyle, sexual orientation, or other inferential information.

(4) Application questions ~~which~~that are vague, subjective, unfairly discriminatory, or so technical as to inhibit a clear understanding by the applicant ~~are~~shall be prohibited.

(c) All underwriting decisions shall be based on individual review of one or a combination of the following categories of information:

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(1) Specific health information furnished on the application;

(2) any reports provided as a result of medical examinations performed at the company's insurer's request; or

(3) medical record information obtained from the applicant's health care providers or any combination of the foregoing these.

(d) Adverse underwriting decisions shall not be based on less than conclusive responses to application questions.

(d)(e) Each adverse underwriting decision shall be based on sound actuarial principles pursuant to K.S.A. 40-2,109, and amendments thereto. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 40-2,109, K.S.A. 2023 Supp. 40-2404(7) as amended by L. 1987, Ch. 171, Sec. 1; effective, T-88-35, Sept. 17, 1987; amended May 1, 1988; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Insurance Department
Agency

Philip Michael
Agency Contact

785-296-7809
Contact Phone Number

40-1-36
K.A.R. Number(s)

Permanent Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

The proposed amendment to K.A.R. 40-1-36 updates the protocol for HIV testing by permitting life insurers to use newer, more accurate testing protocol approved by the United States Food and Drug Administration (“FDA”).

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The amendment is not mandated by federal law. However, the FDA has approved a new testing protocol and the Western blot test currently required by K.A.R. 40-1-36 is no longer the recommended/required testing protocol.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The amendment will enhance business activities and growth by allowing insurers to use new, more accurate testing protocol. The regulation will permit the use of the current test, the Western blot, or the new protocol. This will allow insurers to update their procedure at their own pace. Eventually, the Western blot will not be performed in laboratories.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The amendment will have no economic effect on insurers because they will be able to use the currently approved Western blot or the newer test. As the Western blot becomes unavailable insurers will be required to transition to the new protocol. This amendment allows that transition.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Insurers that write health or life insurance and their distribution partners, i.e., insurance producers.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The amendment itself results in no cost. Insurers may transition to the new protocol at their own pace. Only as the Western blot becomes unavailable will they be required to transition. The amendment allows that transition but does not require it.

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E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

N/A

F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$\$0

Costs to Local Governmental Units – \$\$0

Costs to Members of the Public – \$\$0

Total Annual Costs – \$\$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

N/A

- Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- No
- Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

N/A

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

N/A

G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of

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Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

N/A

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The American Council of Life Insurers requested the proposed amendment. In addition, feedback from industry about the testing protocol and difficulty obtaining the Western Blot test was received by the Department.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- Yes If yes, complete the remainder of Section IV.
 No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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Kansas Administrative Regulations
Economic Impact Statement
Public Hearing Certification
(To be completed after the public hearing)

Agency: [Click here to start typing](#)

Agency Contact: [Click here to start typing](#)

Phone Number or Email: [Click here to start typing](#)

K.A.R. Number(s): [Click here to start typing](#)

Public Hearing Date: [Select date](#)

Public Hearing Time: [Click here to start typing](#)

Public Hearing Location: [Click here to start typing](#)

Public Hearing Attendance: [Click here to start typing](#)

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