K.A.R. 40-1-36. Life and health insurance applications; underwriting; acquired immunodeficiency syndrome (AIDS); definitions. (a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Acquired immunodeficiency syndrome" and “AIDS” mean one or more opportunistic diseases 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) "Adverse underwriting decisions" mean the actions described in K.S.A. 40-2,111(a), and amendments thereto.

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

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

(1) 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 before testing containing factual information describing AIDS, its causes, symptoms, the ways it is and can be spread, the tests used to detect the HIV antibody and the actions to take for a person 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 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) An insurer may ask diagnostic questions on each application for insurance.

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

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

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

(1) Specific health information furnished on the application;

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

(3) medical record information obtained from the applicant's health care providers.

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

(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; effective, T-88-35, Sept. 17, 1987; amended May 1, 1988; amended July 12, 2024.)