

ETHICAL AND LEGAL ISSUES IN MEDICINE

Is Getting Tested for HIV Risky Behaviour?

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"I'm telling my friends not to get tested; it's not worth the consequences in the future".

This sort of statement is not uncommon amongst medical students after learning about HIV and AIDS in Canada. These are the same students who are training to be physicians and health advocates, students that are destined to promote healthy living among Canadians.

The truth is, despite how outrageous this discussion sounds, it is not entirely surprising. The primary issue concerns the lack of clarity around insurance policies. Does the very act of getting screened for HIV, regardless of the result, put one at risk of having to pay higher health insurance premiums? Does the act of getting tested for HIV inform insurance companies that those who get tested participate in risky behaviour and thus deserve higher premiums?

The development of insurance policies and their effect on HIV/AIDS screening is quite complex and has continued to change since the onset of HIV/AIDS in North America. Ultimately, it should be realized that it is more important to have testing than not, and that there ought to be safeguards to ensure that issues, such as fear of discrimination by insurers, not be a deterrent.

HIV TESTING AND INSURANCE

A life insurance policy is a contract between the policyholder and the insurer, designed to provide financial protection in the event of death.¹ Premiums are calculated to support the risk of the applicant, using their age, gender, health status, lifestyle and family history. The insured is then assigned to a group of others with similar life risks. The premium is based on the risk of dying within any future year. The process of categorizing persons to be insured into groups with similar risks is called underwriting. By its nature, this process discriminates between individuals but it is designed so people pay premiums according to the individual's risk status.

Prior to 1986, there was considerable debate regarding the validity of HIV antibody testing and thus its application to life insurance underwriting. However, in a 1986 report, the Canadian Bar Association and Ontario AIDS Committee found that the test was sufficiently reliable that it could properly be the subject of inquiry by insurers.² By 1988, questions about HIV/AIDS had become commonplace on insurance applications.

In the early 1990s, AIDS specialists estimated that for four or five out every ten people they counselled, the implications of life insurance played an important role in the decision as to whether to be tested for HIV.³ It was believed that someone who has been HIV tested would be less likely to obtain coverage even if the result of the test was negative. The Association of British Insurers denied this, stating that "having a negative HIV test will not, in itself, prevent someone from obtaining insurance or even affect the cost"; however, at the time, the British Department of Health report stated, "it is clear that this is not fully appreciated, or believed to be in practice by AIDS specialists."³ In 2002, the British Medical Association (BMA) and the Association of British Insurers (ABI) issued new guidelines to doctors, patients, and insurers on what information about HIV and sexual health could be supplied to insurers by general practitioners. The policy removed the right of insurance companies to ask, and practitioners to answer, the speculative questions about a person's lifestyle. Furthermore, insurers could only ask whether an applicant had a positive HIV test result or is receiving treatment for HIV/AIDS.⁴

Clarifying guidelines such as the ones produced by the BMA are not found in Canada. Currently, the Public Health Agency of Canada website suggests that, "sometimes even taking an HIV test, regardless of the result, can cause an insurance application to be refused" when describing benefits of anonymous testing.⁵ Such statements contribute to the uncertainty regarding HIV testing and insurance rights.

In order to clarify what questions are actually asked on Canadian insurance policies, it is necessary to look at their individual applications. Table 1 includes the questions asked by major Canadian life insurance providers. It is clear that several life insurance applications do not ask questions regarding whether HIV testing has been undertaken, but rather ask if one has been diagnosed with HIV or AIDS. However, it can also be seen that two providers still ask whether the applicant has received *advice* regarding AIDS. The term *advice* is ambiguous in that it could include a wide array of interpretations from pre-test counselling, to advice on HIV/AIDS prevention or how to get tested. The ambiguity in the questions that are currently asked in some life insurance applications suggests that discrimination is possible on the basis of being tested alone.

Currently, in Canada, there is no clear legislation that prohibits insurance companies from asking questions regarding HIV testing. This provides insurance companies the opportunity to ask vague questions regarding receiving advice for HIV/AIDS. It is unreasonable for insurance companies to base risk on whether or not an individual has simply been tested or received advice on the matter of HIV/AIDS. In a society that promotes preventative primary medicine, one would hope that the majority of citizens were receiving counselling and education regarding HIV/AIDS and safer sex practices in order to minimize risks for contracting the virus.

There is a great need for increased screening for HIV in Canada. Currently, in Canada, it is estimated that 30% of the HIV-infected population are unaware that they are infected.⁶ Given the possibility of transmission and that new treatments are available for HIV infection, it is more important than ever that all Canadians be able to access HIV testing without facing risks of stigmatization and potentially unfair costs.

RECOMMENDATIONS

As a society we should encourage our government to implement clear guidelines in conjunction with the Canadian Life and Health Insurance Association, such as those produced by the BMA and ABI. These guidelines would regulate the types of questions that may be asked regarding HIV testing on Canadian insurance application forms. Specifically, those questions must be clear, and ensure that Canadians should not be discriminated against for having been tested for or having discussed HIV/AIDS with their health professionals.

Until such guidelines are in place, health professionals should continue to encourage HIV testing as a means of health promotion. In Canada, there are several testing options available: nominal, non-nominal and anonymous.⁶ With nominal testing the HIV test is ordered using the name of the person being tested, there is collection of patient information, the test result is recorded in the health care record and if the HIV test result is positive, the person ordering the test is legally obligated to notify public health officials.⁷ Non-nominal testing is similar to nominal, except that the HIV test is ordered using a code or the initials of the person being tested, rather than the full or partial name. Anonymous testing is available at specialized clinics. The person ordering an anonymous HIV test does not know the identity of the person being tested for, the test is carried out using a code, and test results are not recorded on the health care record.

No one should be deterred from knowing their HIV status. Early detection permits early treatment when treatment is most effective and enables patients to take the necessary steps to protect partners from the virus. Barriers to HIV testing need to be eliminated; clear guidelines regarding questions asked by insurance companies should be encouraged in Canada. †

Table 1. HIV/AIDS-related questions on life insurance applications by Canadian insurance providers

Life Insurance Provider	Question(s) asked relating to HIV/AIDS on a life insurance application form
AIG Life of Canada	Have you ever had or been told you had, or are you aware of any symptoms or complaints or had any known indication of, disease or disorder of, or received treatment or advice for: Acquired Immune Deficiency Syndrome (AIDS), positive HIV test, or any other immunological disorder?
Arbetov Insurance Agency	Have you been diagnosed, had treatment for, or have had any indication for possible exposure to AIDS, ARC [AIDS-related complex], or any other immunological disorder? Have you had a positive test result indicating exposure to AIDS?
Manulife	Ever had any positive test, treatment for or exposure to HIV or AIDS?
RBC	Have you ever had, or been told you have or have you ever received treatment or advice for: AIDS (Acquired Immune Deficiency Syndrome) or ARC (AIDS Related Complex) or a positive test for antibodies to HIV (Human Immunodeficiency Virus)?
Sunlife Financial	In the past five years, have you been tested positive for exposure to the HIV infection or been diagnosed as having ARC or AIDS caused by the HIV infection or other sickness or condition derived from such infection?

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