



CONSEIL NATIONAL DU SIDA
7 RUE D'ANJOU
75008 PARIS
T. 33 [0]1 40 56 68 50
F. 33 [0]1 40 56 68 90
CNS.SANTE.FR

OPINION

1991 SEPTEMBER 23RD

INSURANCES

**OPINION ON THE "INSURANCE AND AIDS"
AGREEMENT**

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The National AIDS Council, at its meeting on September 23, 1991, following the request made on June 26, 1989 by Claude Evin for the examination of the issue of insurance cover for HIV-infected individuals, took formal note of the agreement reached on September 3 last between the public authorities and the insurance profession as a whole regarding the "insurability of HIV-positive individuals and the rules for confidentiality in the processing of insurance-related medical information".

Upon the Council's creation in 1989, the insurance issue was among the first it addressed. It issued an Opinion on this sensitive matter, preceded by a detailed report in February 1990. Arguing for greater confidentiality in the processing of personal medical data, it also recommended that insurance companies be prohibited from making the issuance of policies dependent on the result of HIV screening. The Council also deplored the insurance profession's refusal to provide valuable input to the debate by supplying precise, reliable financial estimates of the extra cost, actual and possibly foreseeable, that the epidemic might generate in their profit and loss account. It committed itself to reviewing its position within two years in the event that such figures were in fact provided and if they demonstrated beyond any doubt the emergence of a major threat for the financial health of insurance companies.

Following this report and opinion, a joint commission, chaired by Mr. Jolivet and including representatives of the insurance industry and the public authorities, was charged in July 1990 by the Minister of Social Affairs and Solidarity with the task of making concrete proposals. With regard to confidentiality, the proposals constituted genuine progress compared with current practice. Some have since been included in the agreement. The Commission also expressed for the first time the idea that a policy specifically intended for HIV-positive individuals could be put on the market. Conversely, the proposals of the Jolivet Commission on the use of HIV testing seemed to be biased exclusively in favour of the insurers, suggesting that they be allowed considerable discretion to decide whether or not such a test should be required of an applicant.

Following the work of the Jolivet Commission, Mr. Bérégovoy, the Minister with supervisory powers over the insurance industry, co-signed with Mr. Évin, in February 1991, a press release setting a threshold of one million francs' lump sum indemnity below which insurers would be prohibited from requiring HIV screening. Although the National AIDS Council opposed the idea of such a threshold, it publicly approved the measures because, by fixing at a relatively high level the amount at which the screening requirement may be considered legitimate, they removed the threat that use of such testing might become standard practice. However, the Council made known its reservations on the core issue in a letter to the Minister of Solidarity and to the Minister with delegated responsibility for health. The joint ministerial press release announced that the corresponding implementing decrees were being drafted and would be promulgated in the near future.

Today, six months later, an agreement has been signed and the National AIDS Council, which was not consulted during its drafting – wishes to express grave concern with regard to its provisions. This agreement was described by the signatories as representing a considerable breakthrough in providing access to insurance for HIV-positive individuals, in that it institutes a type of policy specifically reserved for them. It is therefore no longer a matter of an implementing decree but an agreement signed at the highest level, obedience to which is entirely dependent solely on the good faith of individual insurance companies.

The breakthrough in question may well turn out to be illusory for several reasons. Firstly, its scope is extremely limited since it applies exclusively to property loans up to a maximum of one million francs. Secondly, this amount, serving as a threshold below which no screening can be demanded, as required by the spirit of the ministerial press release, has become the limit beyond which no loan, nor, a fortiori, insurance cover for such a loan, can be granted to HIV-positive individuals. We thus observe a complete reversal of the problem on this issue, and, at a fundamental level, it makes the absence of confidentiality standard procedure, since this is a special "product" reserved for HIV-positive individuals, thus announcing to the world their medical status, and the screening requirement also becomes standard.

Almost total freedom is granted to insurance companies in this domain. The sentence: "There shall be no recourse to screening unless justified by the size of the policy or the information collected in the risk assessment questionnaire" gives rise to the gravest concerns. What is the threshold (under one million francs), in the eyes of each company, at which the size of the policy becomes a justification? What information might justify a screening requirement? Who will be the judge in establishing the financial or other criteria that justify recourse to screening? As matters stand, given the broad discretion granted to insurers, these provisions no longer provide any safeguard from the point of view of the public authorities.

The questionnaires, which should now omit any question touching on private matters, explicitly include two questions related to HIV testing. One can see here all the subtlety of a method which allows HIV-positive individuals to be prevented from obtaining insurance cover in practice, since no obligation is imposed upon individual insurance companies to insure them, despite the fact that the option to do so is in fact available. Therefore, any individual who has been screened and who declares him- or herself to be HIV-positive may be refused cover; any individual who has been screened and who declares him- or herself to be HIV negative may subsequently be suspected of having made a false statement, as could any individual who maintains that he or she has not been screened. Finally, any individual in an age group or profession at risk who refuses to be screened may also be deprived of entitlement to a loan or to insurance cover.

In this way, HIV screening is made virtually compulsory for certain age groups. One may also point out the absence of absolute confidentiality implied by the very concept of products reserved solely for HIV-positive individuals, as well as by the non-medical processing route followed by health questionnaires, these being sent by the applicant to the credit institution, which then passes them on to the insurance company. The indication "confidential communication", which means "under seal", does not appear to the Council to provide sufficient guarantees of confidentiality.

Finally, the National AIDS Council observes that, whereas insurers commit themselves to put in place a very specific and limited type of policy for the benefit of HIV-positive individuals (loan cover), the freedom they are granted in return to require a priori screening relates to all forms of personal insurance (the various types of life policy), which includes group policies and supplementary health insurance). We would thus find ourselves on a slippery slope that the National AIDS Council has always wished and still wishes to avoid.

Two further comments are called for the first refers to the transparency of the debate and the second to the position of associations for the defence of AIDS sufferers and HIV-positive individuals.

1) Since the beginning of this debate, insurers have refined their quantitative estimates of the financial impact of the epidemic on their business. It is probably by using new actuarial research that they now claim to be able to propose collectively, in return for an extra premium, an insurance product specifically for HIV-positive individuals. However, these public commitments have been given without any of the underlying statistical data being published, which serves to confirm their refusal, already noted by the National AIDS Council, to provide substantive input to the debate with the required degree of transparency.

2) While highlighting these limitations, associations for the defence of AIDS sufferers and HIV-positive individuals have welcomed the Agreement as a breakthrough. In the last analysis, the National AIDS Council's position is in fact much more stringent. This is because it is the Council's duty is to defend, from the ethical point of view, the interests of the entire national community as regards both public health and individual freedom, and not simply the interests of a specific category of person, even if that same category is the main victim of the epidemic.