

Solving the Puzzle of Insurance & Government Benefits for People with HIV/AIDS



INTRODUCTION

A diagnosis of HIV infection is a shattering experience for anyone. It changes your life and it forces you to pay attention to matters you may have taken for granted or simply avoided: matters like your health, relationships, living situation, finances, and employment.

It is also a time to plan for the future and to lay the groundwork for hard changes. You begin to ask questions you've never asked, such as:

- What should I do if I'm no longer able to perform the functions of my job?
- How can I keep my company benefits if I go on disability?
- How can I survive without my paycheck?

Or this may be a time when you're facing other kinds of questions, like:

- What do I do if my company switches health plans?
- What are the insurance consequences if I begin to take drugs prophylactically?
- Can I force my insurance company to pay for promising treatments that are still experimental?
- Can an insurance company test me for HIV infection?

If you have a life threatening illness you need to make decisions early. Your options, at first, may seem like an unsolvable puzzle. Once you are aware of your rights and the rules of the game, however, you can begin to fit the pieces of the puzzle together and claim the health and income benefits to which you are entitled. This process is **The Benefits Game**.

Before you start the game you'll need to collect the pieces of the puzzle. You'll find these in a number of places:

- the plan document,
- your employee handbook,
- your company insurance policy, or
- communications from your company's personnel department.

If you do not receive benefits through work or an individual insurance policy, you can collect the puzzle pieces for government entitlements by:

- visiting the appropriate agency office,
- obtaining government publications, or simply
- contacting your local AIDS service organization.

If you still have questions after you've read the information, bring your employee handbook, insurance policy, and other documents when you meet with your local AIDS legal services agency attorney.

You are now ready to play The Benefits Game. Remember this is your game; you decide which puzzle pieces you will use and how you will use them. And by knowing the answers to some frequently asked questions you will be able to fit all the necessary pieces together to receive the most secure health and income protection possible. .

INSURANCE BENEFITS

Your benefits may come from several different sources. You could have an individual policy you purchased yourself or you may receive coverage through an employer's group plan. If you are included in a group plan, the size of the group may affect your rights. Different rules cover different sources, so keep in mind where your insurance comes from as you read this section

HEALTH INSURANCE

"When you've got good health, you've got about everything." But if you're a person with HIV infection, the same is true about benefits. When you've got good health insurance, you've got about everything.

The soaring medical costs in treating your HIV infection can wipe you out financially unless you have adequate health insurance. Since most Californians receive medical coverage through work, you will need to plan the continuation of your health benefits before you change jobs or go out on disability. Or if you are having problems with your health insurance carrier (for example, your insurer is refusing to pay valid claims or is attempting to rescind your coverage), you will need to know your options. Contact your local AIDS legal services agency for assistance.

1. I am beginning a new job. Do I have to complete a medical history questionnaire in order to obtain health insurance?

Maybe. A general rule of thumb the larger the employer, the less likely a medical questionnaire. Employees of large groups usually do not have to complete medical questionnaires. On the other hand, employees of small groups (3 to 50 employees) often do have to complete medical history questionnaires. Even when this requirement exists, however, the information on the questionnaires cannot be used to deny you coverage. It is only to be used to set the employer's group premiums.

2 If I am insured under a small group (3 to 50 employees) policy, and the insurance company finds out that I have HIV infection, can the insurer drop me? Can the insurer raise the rates for the group?

An insurer cannot drop a group or drop you if you develop an illness or incur large medical bills. An insurer can, however, raise the employer's premiums at the next policy renewal period. Your employer cannot encourage you to opt out of a group insurance plan in order to keep its premiums low.

3 If my employer's insurance company does require detailed medical information, can the company test me for HIV infection?

In California, health insurance companies cannot require you to take an HIV antibody test or force you to disclose your antibody test results from previous tests. This is only true for health insurers, not for life and disability insurance carriers (see #23 and #38 below). All three types of insurance companies, however, can consider T-cell (or CD4) counts that are in your medical record.

If you are applying for individual health insurance (not employer-provided), the insurer cannot reject you based on your HIV status. They can, however, reject you for individual insurance based on other factors determining your health status. Insurers can, and often do, ask questions regarding any history of sexually transmitted diseases. They also may ask whether you have been diagnosed with or treated for AIDS, ARC or any immune suppression. If you are HIV positive and asymptomatic, are not taking any prophylactic drugs, and have not had T-cell monitoring, the answer to that question is "no." If you have been monitoring T-cell counts or are taking any prophylactic drugs, consult with your local AIDS legal services agency when filling out insurance applications.

4. Can I lose my health insurance once the policy begins?

Not usually. An insurance policy is a contract; as long as the insurer receives its premiums, the policy remains in force. Nevertheless, an insurance company may cancel a policy if you misrepresented a relevant fact in your original insurance application and they could have refused to give you the policy had they known the true facts. Individual policies are non-cancellable after two years unless you committed fraud.

Misrepresentation on the initial medical history questionnaire need not be intentional. But a misstatement or omission to a question on the application must be significant to the insurer's medical underwriting of your policy, i.e., if the insurer had known the correct answer it would not have issued your policy in the first place. However, if the question is ambiguous with two or more interpretations, then your answer may still be acceptable. Answer questions on medical history questionnaires truthfully but narrowly that is, answer only the questions asked.

An insurance company may also deny certain claims for a specific period of time based on a pre-existing condition (see #5 below). This does not mean, however, that your policy is cancelled.

5. I started work in November. My physician had diagnosed me with AIDS in September. Can an insurance company label this a pre-existing condition?

Possibly. Health insurers often put a pre-existing condition exclusion in their policy. This exclusion means that the insurer will not pay claims relating to a condition that you already had. In the case of group health insurance, this exclusion can only last for six months after the policy starts, and can only relate to conditions for which you received advice or treatment during the six months before the policy started. Individual health insurance policies are regulated by a similar standard with 12 months on either end.

Note that a pre-existing condition does not mean you do not have insurance; it only means that certain claims will not be covered for a limited period of time. Other conditions or injuries would be covered.

If you had symptoms that a general medical practitioner would attribute solely to HIV infection, an insurance company might consider this to be a pre-existing condition. A positive antibody status alone, without symptoms or treatment of any kind, is not enough to constitute a pre-existing condition.

6. I am switching jobs. Will I be subject to a new pre-existing condition exclusion at my new job?

If no more than 180 days elapsed between your old employer-based health care coverage and your new coverage, the time you were previously covered will be credited against your new pre-existing condition exclusion. If you had been covered for 6 months, you will not be subject to a new pre-existing condition exclusion.

If you previously had individual (ie.,not employer-based) health care insurance and are switching to a new individual policy, you are allowed a gap of only 30 days between policies before the insurer can impose a new pre-existing condition exclusion. In any case, it might be useful to note that HMOs don't have pre-existing condition exclusions.

7. Can I dispute a denial of benefits if the insurance company asserts that the treatment is related to a pre-existing condition?

Yes. The plan administrator must give you a full written explanation that specifies the exact basis for the denial. The plan administrator must also give you information on the appeal mechanism for disputing the denial of your claim.

8. Will my insurance company pay for T-cell (CD4) testing or viral load tests?

Most insurance companies pay for T-cell testing, and at the time of this revision, many are paying for viral load tests. As new diagnostics become standard in the community, insurance companies will begin to pay for them.

9. Will my insurance company pay for my drugs?

If your policy does not cover prescription drugs, then your insurance company will not pay. If your policy does cover drug reimbursement, your insurer may limit payment to drugs approved by the Food and Drug Administration. An insurer in California may not deny your claim for an FDA-approved drug solely on the basis that your doctor prescribed it for a different use than the one for which it was originally approved. In that instance, the insurer must pay as long as your doctor can demonstrate that major medical associations or journals support the "off-label" use of the drug.

10. The only drug that holds any promise in treating my condition is experimental. Will my insurance company pay for it?

Possibly. Many insurance companies recognize the rapid changes in treating HIV infection. Effective treatments are often available long before FDA approval. Your insurer, therefore, may reimburse for technically experimental treatments after careful examination of credible medical research data. You should also look at how your policy defines the word "experimental." If it is a vague definition, you may be able to convince your insurer that a particular treatment has become the standard of practice in the community and is not experimental.

11. Can my employer set limits ("caps") on how much my insurance company will pay towards HIV care?

Although California courts have not yet addressed the issue directly, an HIV specific insurance cap probably constitutes a violation of the Americans with Disabilities Act. Consult your local AIDS legal services agency if you experience this problem.

12. I am a Health Maintenance Organization (HMO) member, and I want to receive AIDS treatment by a provider not affiliated with my HMO. Can I force my HMO to pay for out-of-plan care?

As a rule, most HMOs will not pay for out-of-plan care unless it is

1. an emergency situation, or
2. so highly specialized that they choose not to provide it within their own network. In this instance, the HMO will pay for out-of-plan care only with prior approval of your primary physician.

13. My employer doesn't offer health insurance, and I've been denied individual insurance because my medical records include my HIV care. Is there any way I can get health insurance?

Yes. The California Major Risk Medical Insurance Program (MRMIP) offers a variety of plans to people who have been denied health insurance in the past. Call 1-800-289-6574 to get an

application. Be aware, however, that the waiting list for this program can be several months or longer.

COBRA COVERAGE

You may be ready for a job change, but you can't afford a lapse in health benefits because you've developed symptoms of HIV infection. Or you may discover you are no longer able to work and need to go on disability. Can you keep your current health plan after you leave the job?

In some cases you may be eligible for continued health care coverage under the federal COBRA law. Check the questions and answers below to see if you have the the pieces of the COBRA puzzle and can continue your health insurance.

14. Can coverage under my employer's health plan continue after my employment ends?

Maybe. There is a federal law called COBRA (Consolidated Omnibus Bud Reconciliation Act of 1986) that require employers with 20 or more employees to offer continued health care coverage at terminated employees and their eligible dependents. Only churches, government employers and employers with fewer than 20 employees are exempt from t rule. Federal government employees, entitled to continued health benefits under a similar statute. (Note: Employees of state and local governments may be eligible for other types of continuation coverage through programs such as PERS and STRS. Speak with your plan administrator to find out if you qualify.)

15. Does it matter whether I quit, was laid off or fired?

No. Your employer must allow you to elect COBRA continuation unless your employer

1. fired you for gross misconduct, or
2. transferred you to a job that didn't offer health coverage.

You may also elect COBRA if you went on leave or had a cutback in hours that made you ineligible for the company's group health care plan. These are "qualifying events" for COBRA coverage eligibility.

16. What coverage do I get under COBRA, and what will it cost me?

You receive the same coverage as before you left work. In addition many companies allow you to switch health insurers once a year during "open enrollment." With COBRA you can do this too, as if you were an active employee. But any changes the company (or a successor company) makes to its health benefits plans, good or bad, apply to you as well. The monthly expense to you for COBRA coverage is 102 percent of the premium your employer pays on your behalf.

17. My employer is thinking of getting rid of its group health plan. Am I protected if I'm on COBRA?

Your employer is under no legal obligation to continue your coverage under COBRA if it drops its group health plan altogether. But if the employer switches to any other group health insurance, then the new plan must allow you to join. And if your coverage continues under an extension of benefits provision (see #19 below), or if you converted from the group plan to an individual plan, the employer's cancellation of the original plan will not affect your coverage.

18. Is COBRA the only way to continue my health coverage?

No. California law requires that group health insurance policies contain a conversion option. This option allows you to "convert" your participation in the employer's plan into your own individual policy. You are entitled to a conversion policy regardless of your medical condition. Unfortunately, premiums on converted policies may be quite high and the policies may not pay many expenses, such as prescriptions.

If your employer cancels the group insurance and you are disabled at the time the plan terminates, you are entitled to an extension of benefits. This extension provides you with up to 12 months of coverage at no cost. The extension of benefits provision covers the disabling condition only. Consequently, this insurance protection covers all HIV-related claims if that is the reason for your disability, but not claims for unrelated illnesses or injuries.

Be aware that if your employer is "self insured," it is not required to offer either conversion or extension of benefits. Self-insured employers are large employers who create a fund to pay for employees' health benefits, instead of buying a group insurance policy. Since self-insured employers often hire an insurance company to administer the self insured plan, it can be difficult to tell whether your employer is self-insured. Be sure to ask about this if you have questions about continuing your health coverage.

19. Does it matter for COBRA whether I leave my job before I become technically disabled?

Yes, it matters in a couple of very important ways

1. If your employer's plan promises full health care coverage for the duration of your disability, you don't need to obtain COBRA coverage. If it doesn't give you this coverage, your disability onset date could mean the difference between 18 months of COBRA coverage, or 29 months. If you already meet the Social Security definition of disability, or if you meet it within 60 days after leaving, then you are generally entitled to COBRA coverage for 29 months.

In order to receive the additional eleven months of health coverage, you must obtain an award letter from the Social Security Administration within the first 18 months of COBRA. The Social Security award letter will contain your disability onset date. (You can apply to Social Security for a ruling specifically to obtain COBRA, even you don't want Social Security benefits.) You must

notify your employer within 60 days after receiving the Social Security award letter. This extra eleven month period should cover you until you become eligible for Medicare. Although your employer can charge you 102% of its average employee's coverage during the first 18 months it can charge 150% during those eleven additional months.

2. Some employers will continue pay for your health care coverage for the duration of your disability, if your disability occurred while you were their employee. For this purpose, your employer's health plan documents will determine whether you are disabled. Thus, you might qualify for extended coverage under your employer's plan even if your disability doesn't meet Social Security's definition and even if COBRA coverage is not available from your employer. In these situations, the cost to you is usually no greater than what you paid as an employee.

20. If I go to work for another employer will my COBRA coverage end?

It depends. If your new employer's health plan has limits or exclusions for pre-existing conditions that apply to you, then you may keep your former employer's COBRA coverage to supplement your new coverage until its normal expiration date (18 or 29 months after you left your old job). Of course, there's no reason to continue the expense of a COBRA plan if your new plan has the same or better coverage.

21. If my disability leave is only temporary, do I need to go on COBRA to keep my health benefits?

No. Under the federal Family Medical Leave Act (FMLA), an employee who qualifies may take a temporary leave for up to 12 weeks during any 12 month period. The FMLA applies to those with serious health conditions who cannot work, and requires the employer to give you your job back when you return.

Although the employer does not have to pay your salary during your leave, it must continue to pay for your group health benefits on the same terms as for active employees.

If you decide not to go back to work after the 12 week period, the employer may require you to reimburse it for the health care premiums it paid. It's up to the employer. COBRA coverage would begin when your disability leave was determined to be permanent.

22. Because of my HIV condition, I can no longer work. If I can't afford to pay my COBRA premiums, will I lose my insurance coverage?

Yes, unless you enroll in a program to pay your premiums for you. If you are eligible for Medi-Cal (see #73 below) with a share of cost of \$200 or less, Medi-Cal may choose to pay your private insurance premiums instead of paying directly for your health care. Call 1-800-952-5294 and ask about the HIPP (Health Insurance Premium Payment) program. If you don't yet qualify for the Medi-Cal/HIPP program, but you will within the next 15 months, you may be eligible for a similar program called CARE/HIPP. Contact your local AIDS service out if you qualify.

DISABILITY INSURANCE

You may discover you're no longer able to perform the functions of your job. Or the long hours at work leave you exhausted when you return home. You review your employer-provided disability plan, but you don't know if you meet the policy's definition of disability.

Before making your next move in The Benefits Game, you need to consider a number of factors: your health, finances, and job satisfaction. It is essential to talk with your physician so she or he documents not only your medical condition but also your inability to perform the duties of your regular job. It is equally important to make requests to your employer in writing, and to save copies of all correspondence and forms.

The following questions and answers may help you decide whether employed provided disability insurance could help you solve your benefits puzzle.

23. I am starting a new job and my new employer has a disability insurance plan. I also recently tested positive. Will I be able to get coverage?

It depends on your new employer's plan. Many employer-sponsored group disability plans do not require medical information for new employees if they elect coverage when they are first eligible. This is particularly true of plans sponsored by larger employers. Under California law, however, a life or disability insurance company can ask if you have previously been tested solely for the purpose of obtaining insurance coverage. In addition, a life or disability insurance company can require an HIV antibody and then deny coverage if you test positive or refuse to authorize a test.

Finally, they can ask if you have received treatment for symptoms of AIDS, ARC, or immune suppression. Although taking prescription medicines would constitute "treatment," HIV status alone does not mean "treatment" or a pre-existing condition. If you have any questions about how to fill out an application, contact a benefits advocate.

24. I did not elect coverage under my employer's disability insurance plan when I was first eligible. In the meantime, I have tested positive. Is there any way that I can obtain coverage now?

Maybe. If you did not elect coverage when first eligible, the insurance carrier is probably going to require medical information by making you take a physical and filling out a medical history. This may result in disclosure of your HIV status and probable denial of coverage. Most group insurance plans, however, have open enrollment periods when you can sign up for coverage without evidence of insurability. In addition, if your employer's plan allows you to elect different dollar amounts of coverage, you can probably use the open enrollment period to increase the amount of coverage if you were previously enrolled.

25. How can I find out if my employer will continue to pay my salary if I am unable to work?

Check with your human resources department or the person who normally handles personnel and benefit issues. You should ask for a description of the employer-provided benefits. An employee handbook or a Summary Plan Description may answer many of your questions. The law requires employers with disability, pension, and health plans to provide workers with written descriptions and eligibility information.

26. What kinds of employer plans will continue to pay all or part of my salary if I am unable to work?

Generally two types of plans continue to pay you when you are unable to work sick leave and disability. You will need to find out what your employer's rules are concerning the amount of sick leave that you get each year, the amount that you can carry over from one year to the next, and the amount of sick leave that you currently have accumulated. An employee on sick leave is treated as an active worker at regular pay with the same benefits. (The exception is for the FEMA leave discussed in question #21.) The other type of plan is a disability plan. Disability plans usually kick in after you have used up all your sick leave. Some disability plans (called short-term disability plans, supplemental benefit plans, wage benefit or continuation plans) give you benefits for short periods of time, say six months. Other types of disability plans (called long-term disability plans) only start to pay benefits after you have been disabled for a stated period of time. Some employers have designed their benefits so that the combination of sick leave and short-term disability cover you until you meet the eligibility of long term disability plan benefits.

27. I don't think my employer has any type of disability plan that covers me. Doesn't the law require some kind of coverage?

The law only requires that employers provide minimal disability coverage under the California State Disability Insurance Program (see # 57-62).

28. How much of my salary will I get under my employer-sponsored disability plans? Are there other benefits from my employer?

There is no uniform formula for calculating disability benefits. Each plan has its own level of salary replacement. Typically a short-term disability plan provides a fairly high percentage of salary replacement while a long-term disability plan gives you considerably less.

Other benefits vary greatly among employer plans. For instance, some employers may also cover insurance premiums for disabled employees, while other don't.

29. When am I considered disabled?

Most employer-provided plans say you are disabled if you are unable to perform the duties of your regular job. Some insurance carriers are harder to convince than others and may routinely deny benefits. If you are told that you cannot receive disability benefits because you are not

disabled "enough" or for any other reason, you should contact your local AIDS legal services agency to discuss an appeal.

30. Assuming I qualify as "disabled" under my employer's plan, but I am also able to perform my job, should I go on disability now or wait?

The answer really depends on your personal situation. Since disability only provides a portion of your salary, you have to determine whether you can meet your financial obligations on a reduced income. In analyzing your future economic needs, remember that developing medical technologies may result in radical changes in the treatments available to people with HIV. In addition there may be other types of benefits (e.g., pensions) for which you might qualify if you work longer. Finally there are "quality of life" questions only you can answer Do you enjoy your job? Do you want (and are you able) to pursue other activities like travel or volunteer work? Do you want to move closer to family and friends?

31. I can no longer perform the functions of my regular job, but my employer has offered me another job which I can perform. Do I have to take the new job in order to preserve my benefits?

It depends on your plan's definition of disability. Many plans have a two-part definition for disability. First, because of illness or injury, you are unable to perform the duties of your regular job and, second, your employer is unable to find another job for you with duties you can perform. If your plan has this type of definition of disability, and your employer offers you a job you can perform, then you have no choice but to take the job or terminate employment without disability benefits.

Your employer may offer you a new job you don't think you can perform. Give the new job a try but document your own performance. If the new job is beyond your capabilities, you should again assert your right to disability. If you are taking excessive sick leave, inform your personnel representative you are unable to perform the new job duties because of your original disabling condition.

32. Do I also have to qualify for Social Security disability benefits in order to receive my employer-provided disability benefits?

Usually not, except in those relatively rare situations where an employer's plan uses Social Security eligibility as the definition of disability. Most plans, however, do require you to apply for Social Security benefits and file an appeal if you are denied benefits because they can pay you less if Social Security gives you benefits. (It is also useful to apply for Social Security benefits in order to qualify for extended COBRA health benefits. See question #14.)

33. My employer fired me just before I was diagnosed with AIDS. What should I do?

If your employer fired you because of performance problems related to your condition, you should contact your local AIDS legal services agency to discuss whether you have a valid complaint for discrimination based on disability. Even if your employer had legitimate business reasons for firing you, your plan may extend coverage until the end of the month or longer. Some plans also let you convert to individual coverage.

34. I am currently receiving disability payments from my employer's plan. How long will these payments continue?

It depends. Many plans have provisions that stop benefits, such as when you reach retirement age or have received disability for a stated period. Some plans also stop if you start a new job and earn above a certain level while receiving disability benefits under the former employer's plan.

35. I am receiving disability benefits from my employer's plan and am also receiving Social Security benefits. My employer wants to offset part of the benefits paid from its plan with my Social Security benefits. Is this legal?

Yes. If the plan provides a Social Security offset, your employer can legally reduce the benefit it pays you by the amount of your Social Security check. (Some plans also offset benefits received from State Disability Insurance (SDI) and from private disability policies you may have gotten separately.)

36. I am receiving full benefits from my employer's plan which also provides a Social Security offset. After I successfully appealed an original denial of my Social Security claim, my employer is now demanding the government's back-award. Do I have to pay back my employer from this retroactive Social Security award?

Probably yes. But you may be able to reduce the pay-back amount by your expenses in pursuing the appeal.

37. My employer just announced that they are planning to drastically reduce the benefits they will offer under their disability plan. Can they do that? How will it affect me?

It depends. If you are still working, the employer has no obligation to offer disability benefits (as noted in question 27), and can change their plan anytime. But, if you left your job due to a qualified disability, the insurer must continue the benefits that were in effect when you stopped working, even if the cancels benefits for those still working.

LIFE INSURANCE & RETIREMENT

You may also need to protect other employer-provided benefits while you consider disability. Because you are facing a life-threatening illness, continuation of your life insurance coverage takes on heightened significance. Often this is the only major asset that passes to a friend, loved

one, or charity. Or you may someday wish to cash in your policy through an "accelerated benefit" or sell it by means of a "viatical settlement" in order to ease the financial burden that HIV so often causes. Continuing your life insurance coverage is the next step in solving the Benefits Puzzle.

38. I am starting a new job, and my new employer has a life insurance plan. I also recently tested positive. Will I be able to get coverage?

The same answer applies to life insurance as to the question raised regarding disability insurance, discussed in question 23. It depends upon the plan and the insurer's practices.

39. I did not elect coverage under my employer's life insurance plan when I was first eligible. In the meantime, I have tested positive. Is there any way that I can obtain coverage now?

As discussed in question 24, you may receive coverage during an open enrollment period, even if you would otherwise be denied.

In addition, individual life insurance policies may still be obtainable if you apply for guaranteed or simplified issue plans for small amounts.

40. I am covered by my employer's life insurance plan, and I pay the premiums for the coverage. If I have to leave my job, will I get any direct cash benefits from the plan?

Usually not. Most employer-sponsored life insurance plans are term life insurance. This means that the premiums pay for the life insurance coverage for a limited period of time, often only until the next paycheck.

But you do have the right to convert your group insurance to individual coverage without having to provide the insurance company with evidence of insurability. Under California law you have 31 days following termination to exercise this conversion right. Because this is such a short time period, you must be careful not to lose this option. Consult a benefits advocate when you leave your job.

41. What happens to my life insurance if I go on disability and can no longer pay my insurance premiums?

Many insurance policies have something called a waiver of premiums provision. This means that if you become disabled, your insurance coverage continues at no cost to you. You should check whether your policy contains this provision, and when it is triggered.

42. Is there any way I can cash in my life insurance policy to help me meet my basic needs?

Yes. Some life insurance carriers will pay you the value of your life insurance or a portion of it if you are extremely ill. Ask the carrier if it offers this "accelerated benefit." Or you may be able to "sell" your insurance policy through a transaction known as a "viatical settlement," in which a third party investor offers you a discounted amount for your policy. Be aware, however, that receiving cash for your policy may jeopardize your eligibility for need-based government benefits, such as SSI (see #52) and Medi-Cal (see #67). Contact your local AIDS legal services agency or a benefits counselor before you finalize a viatical settlement while receiving need-based benefits.

If you decide to do a viatical settlement, be sure to work with brokers or companies that are licensed by the California Department of Insurance. Only California licensed companies offer some legal protection.

43. Can I receive benefits from my employer-provided retirement plan if I become disabled?

You may have access to certain benefits if your employer maintains a retirement plan such as a pension plan, a profit sharing plan (including a 401(k) plan) or a stock bonus plan. Your rights to benefits will depend on the specific terms of your employer's plan. Federal law requires employers to provide you with a summary description of the important terms of the plan. Federal law also allows you to examine and copy all of the plan documents related to retirement plans. You may also request a statement from your employer that tells you what your benefits would be if you worked until normal retirement age (usually 65) and if your rights under the plan are vested (i.e., non forfeitable).

44. When may I receive benefit payments from my employer's retirement plan?

Retirement plans generally come in two forms: defined benefit plans and defined contribution plans. Defined benefit plans (i.e., pension plans) pay a predetermined amount of benefits upon retirement after an employee attains normal retirement age. Usually a pension plan will not make payments to your estate or to your beneficiaries if you die, although payments generally continue after death to a legal spouse. Your plan, however, may have an early retirement age that would allow payments to begin earlier than the normal retirement date. Your plan may also allow you to receive payments if you retire due to disability.

Defined contribution plans (e.g., profit sharing plans and stock bonus plans) typically allow easier access to retirement benefits than a defined benefit plan. Some of these defined contribution plans allow you to withdraw your benefits after a certain number of years of participation. A defined contribution plan may also include a salary deferral plan, often called a 401(k) plan. A 401(k) plan may allow you to withdraw your contributions upon attaining age 59*, retirement, death, disability or separation from employment. A 401(k) plan may also allow distributions in case of financial hardship caused by threatened foreclosure on a home, eviction, tuition or medical expenses.

45. Do I have a right to receive any benefits from my retirement plan if I become disabled before reaching normal retirement age?

Not unless your employer plan provides for the payment of benefits upon your becoming disabled.

46. Will I have to pay income taxes on payments from my employer's retirement plan?

Yes, except for certain amounts on which you paid tax in the year you made the contribution. Moreover, if you receive a distribution before you attain age 59*, there is a 10% penalty tax in addition to income tax on such distribution. The 10% penalty does not apply if you are disabled or if you terminate your employment after attaining age 55. If you receive your entire benefits in a lump sum, you may be able to use five-year averaging to reduce income tax.

GOVERNMENT BENEFITS

INCOME BENEFITS

If you are disabled because of a severe HIV condition, you may qualify for income benefits under a government sponsored program.

The federal Social Security Administration administers two separate but related disability benefit programs. The first of these programs, Social Security Disability Insurance (SSDI) or Title II, is essentially an insurance program available to disabled claimants who have paid into Social Security during their working years. The other program, Supplemental Security Income (SSI) or Title XVI, is a need-based program that provides benefits for all disabled people who qualify financially, regardless of whether they have paid Social Security taxes. Please check with an AIDS service provider or with your local Social Security office to obtain detailed information and pamphlets on both SSDI and SSI.

In addition to these federal programs, the State of California Employment Development Department administers the California State Disability Insurance (SDI) Program. This program provides a portion of your salary for short-term absences from work due to a non-work related accident or illness. It covers most California workers other than government employees.

Persons with a disabling HIV condition need to know what government benefits are available. If you do not have employer-provided benefits or if your company benefits have run out, or not yet started, you will need to collect the appropriate pieces to solve the government income puzzle.

47. How do I qualify for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI)?

First of all, you must be disabled. The Social Security Administration (SSA) defines disability as a severe medical condition (physical or mental) that prevents or is expected to prevent you from

working for 12 or more months, or will result in death. Many AIDS diagnoses will automatically qualify you as disabled.

For many HIV-related conditions (including a T-cell count of 200 or less), you must also be able to show that your condition, whether from a single illness or a group of illnesses, severely restricts your ability to engage in normal, daily activities in order to be considered disabled by SSA. To do so, you will need to work with your physician or psychologist to thoroughly document your disability claim.

Second, in addition to being disabled, you must show that:

1. You have paid into the Social Security system to qualify for SSDI (see #49) or
2. You have a financial need based on limited resources to qualify for SSI (see #52).

48. How do I apply for SSDI or SSI?

Call the toll free number, 1-800-772-1213, to make an appointment. Or walk into any Social Security Administration office and file an SSDI or SSI application.

Although you can prepare and file an initial application by yourself, we recommend your working with an AIDS benefits counselor from a local AIDS support organization. This may increase the likelihood of approval.

SOCIAL SECURITY DISABILITY INSURANCE (SSDI)

49. How do I know whether I am eligible for SSDI?

To be eligible for SSDI, your employer must have withheld Social Security taxes, (FICA) from your paycheck for a sufficient period of time. If self-employed, you needed to have made direct quarterly payments to Social Security through your self-employment tax.

50. When should I apply for SSDI?

As soon as you become disabled. Although SSDI benefits are payable no earlier than 5 months after your disability began, you should not wait to file. If the Social Security Administration determines you became disabled before the time you applied, you may be entitled to past due benefits of up to 12 months.

51. How much are SSDI benefits?

The amount of your benefits depends on several factors, including amount of earnings, age at onset of disability, and date of disability. You may ask the Social Security Administration for an estimate of how much your benefit will be.

SUPPLEMENTAL SECURITY INCOME (SSI)

52 How do I apply for SSI?

If you are disabled and have limited resources, you may be eligible for SSI payments if you meet the following criteria:

1. Your assets, such as stocks and bank accounts do not exceed \$2000 for an individual or \$3000 for a married couple;
2. Your countable earned and unearned monthly income is less than the monthly SSI benefit;
3. If you own a home, you must live in it; and
4. Your automobile, if you own one, is worth no more than \$4500 unless you use the car for medical purposes, work, or essential daily activities.

53. When should I apply for SSI?

Immediately after you become disabled. SSI benefits are retroactive only to the date of application.

General processing time for an SSI application is one to three months. Although some AIDS diagnoses will cause the Social Security Administration to presume you are disabled, the agency still must receive your medical records within three months in order to make a final determination of disability.

54. How much are SSI benefits?

The SSI level frequently changes due to state and federal budget cuts. However, a full benefit for an unmarried individual hovers in the low 600's. If you receive other income, live in someone else's home, or do not have a kitchen, your benefit level will be affected.

55. Can I receive both SSDI and SSI benefits?

Yes, in some instances. If you received low wages during your working years, SSI payments may supplement your SSDI benefits. Please note, however all SSI income and resource limitations still apply.

56. Can I return to work and still retain my SSDI or SSI benefits?

Yes, under certain conditions. You may decide you want to return to work, but you are uncertain whether you can handle a full time job. Both SSDI and SSI programs offer incentives so you can test your ability to work without losing your benefits. SSDI offers a 9-month trial work period while SSI allows you to work indefinitely. Since restrictions apply, check with your local Social Security Administration office for details, or obtain a copy of its brochure on work incentives by calling the toll free line 1-800-772-1213 and asking for SSA publication # 05-10095.

STATE DISABILITY INSURANCE (SDI)

57. How do I qualify for SDI?

SDI provides short-term benefits after you are absent from work for more than 7 calendar days due to a non-work related accident or illness. You must have worked for an employer that paid into the SDI program, or if self-employed, you must have elected to participate in the state program. In addition, your physician must certify that you are suffering from an illness or injury, either physical or mental, that prevents you from doing your regular or customary work. Please note SDI's definition of disability is less restrictive than the Social Security Administration's definition (see #50 above).

58. When am I eligible for SDI benefits?

Generally you are eligible for SDI payments after you are out of work for 7 days. But if you were hospitalized, you are eligible after one day.

59. How much are SDI benefits?

Depending on your wages and SDI premiums during a specific 12-month "base period," the amount of your benefits payment will range from \$50 to \$336. The maximum total of SDI benefits is 52 times the weekly rate but no more than your total base period wages. You receive a check twice a month.

60. What if I have accumulated sick leave?

Your accumulated sick pay can be used to supplement your SDI so that the total amount you receive equals your regular paycheck.

61. What if I have assets or other income?

Assets and other sources of income, regardless of amount, do not affect SDI eligibility.

62. How do I apply for SDI?

Mail a completed claim form to a local California Employment Development Department (EDD) office no later than the 49th day after the onset of your disability. You can call the local EDD office in the phone book to request a form be sent to you. Fill out everything on the form except the medical practitioner's section. Your health care provider will need to certify your disability.

OTHER GOVERNMENT INCOME BENEFITS

63. I have no-employer-sponsored or individual benefits and I am not eligible for SSDI, SSI, or SDI. Are there other government assistance programs available?

Yes. You may be eligible for General Assistance (GA), Food Stamps, or Temporary Assistance to Needy Family (TANF) through your county welfare department. Though eligibility requirements may differ from county to county, each welfare department requires that:

1. You have limited income and assets, and
2. You reside in the county

Note that if you receive SSI, your dependent children may be eligible for TANF.

64. I am a U.S. veteran. Are there any additional services available to me?

Yes. If you are a United States veteran who left the service with other than a dishonorable discharge, you may be eligible for several different programs. If the condition which led to your disability began while you were on active duty in the military, you may be eligible for Service-connected Compensation. If you served during wartime and are now totally disabled for nearly any reason, you may be entitled to a Nonservice-connected Pension. You may also be eligible for vocational rehabilitation, free medical and dental care, and free burial. Check with your Bureau of Veterans Affairs Regional Office for details.

HEALTH BENEFITS

If you don't have full health care coverage under a company plan or a policy you purchased on your own, you may be eligible for government health care benefits. In order to qualify for one of these programs, you must be blind, aged, disabled, or a member of a family with dependent children.

The first government-sponsored health insurance program is Medicare. Administered by the Social Security Administration, Medicare consists of two types of coverage, Hospital Insurance (often referred to as Part A) and Medical Insurance (Part B).

1. Hospital Insurance pays in-patient hospital care, skilled nursing facility care, home health and hospice care after you meet deductibles.
2. Medical Insurance pays 80% of approved doctor services, out-patient hospital services, home health visits and other medical services after you meet deductibles. You need to pay a small monthly premium in order to receive Medical Insurance coverage.

A second government-sponsored health insurance program is Medicaid. California's version of the Medicaid program is Medi-Cal. Medi-Cal is a state-administered program funded jointly by the state and federal governments that pays health care expenses for low income persons. Under this plan the State of California pays health care providers directly for their services.

Your last move in The Benefits Game is learning whether you qualify for health care coverage under a government program. Once you fit one of these health programs into your benefits puzzle, the government and not you is paying most of your health care costs.

MEDICARE

65. How long do I have to wait for Medicare benefits?

Generally there is a 29-month waiting period (5 months until you receive SSDI payments plus 24 months until you are entitled to Medicare). At the end of the 29 months, the Social Security Administration will send you your Medicare card in the mail.

66. What if I have other employer sponsored health insurance?

Some employer plans automatically terminate when you become entitled to Medicare. Look at your Summary Plan Description to see if that is the case. (In addition, all COBRA health benefits cease as soon as you become eligible for Medicare.) If your insurance does not terminate, you should next determine if your health insurance coverage will be the primary health insurance plan, that is, the plan that pays first for any covered health care services you receive. In most cases, your employer-sponsored health plan will be the primary plan. Medicare then becomes the secondary plan that pays some of the expenses your employer plan does not pay. Whether you need Medicare Part B depends on how fully the employer plan covers your medical services. Remember there is a monthly cost for you to receive Part B (\$41.40 a month as of May 1996).

MEDI-CAL

67. How do I qualify for Medi-Cal?

If you receive SSI, you are automatically eligible for Medi-Cal. If you are disabled and have limited resources, but have too much income to qualify for SSI, you may still apply for Medi-Cal as someone who is "medically needy." You will have to prove your disability by the same standard used by Social Security. You will also have to prove that you fit within Medi-Cal's resource limits which are similar, but not identical to, those of SSI.

68. How much of my medical costs will I have to pay? How much does Medi-Cal pay?

If you qualify for Medi-Cal as "medically needy," you will have a monthly deductible known as a "share of cost" which based on your income. Medi-Cal will pay your health care provider everything but that amount. You will be responsible for paying the "share of cost" amount to your provider.

If you qualify for Medi-Cal through SSI, you will not have a share of cost. Medi-Cal will fully pay for the services that it covers.

69. What services are available through Medi-Cal?

Medi-Cal covers office visits to a doctor or dentist, hospital and nursing home care, laboratory and x-ray services, mental health services, prescriptions and medications, eyeglasses, hearing

aids, physician-prescribed medical supplies and equipment, and chiropractic services. Some limitations apply. Please note many of these services require the health care provider to obtain prior Medi-Cal authorization for payment.

70. Will Medi-Cal pay any of the medical expenses I incurred before my Medi-Cal coverage began?

Possibly. You may be eligible for retroactive coverage for three months prior to the month you applied for Medi-Cal. But Medi-Cal will not reimburse you directly. Find out if your health care provider will bill the Medi-Cal program for past services and then refund your money upon receipt of payment.

71. What if I am eligible for both Medi-Cal and Medicare?

You will be able to use both. Medicare be the primary payment source, and Medi-Cal will pay deductibles, co-payment and your Medicare Part B premium.

72. Do I have a choice of health care providers through Medi-Cal?

With Medi-Cal, your ability to choose a health care provider is limited. While public hospitals will always accept Medi-Cal, only some private physicians will. In addition, many counties now require Medi-Cal recipients to get their care through a preselected managed care system, such as a regional HMO. Check your local Medi-Cal office to find out how your choice of care may be restricted.

73. What if I am eligible for Medi-Cal but also have private health insurance?

Under the HIPPP program (see #22 above) Medi-Cal may pay your private health insurance premium for you, instead of paying directly for your health care. Call 1-800-952-5294 to see if you qualify.

DRUG ACCESS

74. The California AIDS Drug Assistance Program (ADAP) can cover the cost of many AIDS drugs if you have HIV and you meet certain financial eligibility requirements. To find out how to enroll, contact your county's Department of Public Health.

Also, some of the major pharmaceutical companies make HIV medications available on a limited basis through patient assistance and reimbursement programs.

AIDS LEGAL SERVICES

SACRAMENTO & NORTHERN CALIFORNIA

Sacramento AIDS Legal Referral Panel
Voluntary Legal Services Program of Northern California
515 12th Street
Sacramento, CA 95814
800-468-8890
916 -444 - 6760

North Coast AIDS Project (NorCAP)
529 I Street
Eureka, CA 95501
707-441-5632

SAN DIEGO

Volunteer Lawyers Program
Legal Services
225 Broadway, Suite 800 .
San Diego, CA 92101
619-235-5656

AIDS Foundation San Diego
140 Arbor Drive
San Diego, CA 92103
619-686 -5050

SAN FRANCISCO BAY AREA

AIDS Legal Referral Panel
1663 Mission Street, Suite 500
San Francisco, CA 94103
415-701-1200
415-701-1400 (fax)

Berkeley Community Law Center AIDS Project
3130 Shattuck Avenue
Berkeley, CA 94705
510-548-4040

SANTA BARBARA

AIDS Project Central Coast
126 E. Haley, Suite A-17
Santa Barbara, CA 93101
805 -963 -3636

SANTA CLARA COUNTY

AIDS Legal Services
111 W. St. John, Suite 315
San Jose, CA 95113
408-293-3135

SANTA CRUZ

AIDS Legal Panel
Santa Cruz AIDS Project
911 A Center Street
Santa Cruz, CA 95061-0557
408-427-3900

VENTURA

AIDS Care, Inc.
P.O. Box 728
Ventura, CA 93002
805-643-0446