

DI Claim FAQ's



Claims Management Services
888-275-7473

BLOOD BORNE PATHOGENS AND THE INFECTED HEALTH CARE WORKER

By Jeffrey A. Yeager, ALHC, FLMI
Vice President, Claims & Client Services
Berkshire Life Insurance Company of America



Occasionally, questions arise concerning Berkshire Life Insurance Company of America's (Berkshire) possible handling of claims involving health care workers with a positive status human immunodeficiency virus (HIV) or other blood borne pathogens such as hepatitis C virus (HCV) or hepatitis B virus (HBV).

Berkshire recognizes the unique challenges some clients may face when they are infected with these and other blood borne pathogens. In some instances, these health care workers may be prohibited from performing some or all of the material and substantial duties of their occupation due to license restrictions or practice limitations imposed by the appropriate licensing or regulatory authorities.

This FAQ outlines Berkshire's current position as to the disability benefits eligibility of health care workers infected with HIV (or another blood borne pathogen). This position is based on our research to date and it is subject to modification as our understanding of this highly dynamic topic evolves. This memorandum is not an amendment or endorsement to any insurance policy and does not change the definitions contained therein.

Many policies administered by Berkshire generally define Total Disability, in part, as the inability to perform the material and substantial duties of one's occupation due to sickness or injury. Subject to the specific definition of Total Disability and other policy provisions, clients will generally be considered to have met that part of the total disability definition if they become infected with HIV or some other blood borne pathogen while their policy is in force and all of the following conditions are satisfied:

1. They test positive using test criteria established by the Centers for Disease Control and Prevention (CDC);
2. They follow the applicable regulations in their state as well as the CDC guidelines for the prevention of the transmission of the pathogen; and
3. As a result of their HIV or other blood borne pathogen status they are restricted or prohibited by the appropriate regulatory authorities, in accordance with CDC guidelines, from performing the material and substantial duties of their occupation or occupations.
4. They have not been sanctioned or lost their license to practice medicine due to failure to adhere to the aforementioned restrictions or prohibitions imposed by the appropriate regulatory authorities as a result of their HIV or other blood borne pathogen status.

If regulatory restrictions still allow for the performance of some of the material and substantial duties of an insured's occupation or occupations, the insured may be eligible to recover benefits under a residual disability provision if their policy provides for a residual disability benefit.

In all cases, we will evaluate each claim in a thorough and professional manner, and the individual circumstances of each claim will be appropriately considered. In each instance, be assured that we are committed to the equitable treatment of our policyholders.

Disclaimer: The above discussion is meant for general information purposes only. **Any policy language citations are for illustration purposes only.** They are not meant to be inclusive of all contract language applicable to a particular claim. **Please refer to the contract for actual terms and provisions that apply.** All claims are evaluated on a case by case basis and such evaluations are based on the facts and circumstances that are unique to each. This FAQ supersedes all prior versions, and will be superseded by all subsequent versions. This publication is offered for informational purposes and does not constitute legal advice. Please consult with your legal counsel concerning any legal questions you may have.