



Positively Empowered

A Legal Guide for People Living with HIV/AIDS

It is easy to think of AIDS as a medical problem. However, AIDS is also a social problem. Since the epidemic was first identified in 1981, many people have used AIDS as an excuse to discriminate. People with HIV/AIDS have been fired from their jobs, evicted from their homes, denied health care, and abandoned by their families. Discrimination has always been a symptom of AIDS.

The best defense against discrimination is knowledge. The information in *Positively Empowered* will help you protect yourself. After reading this guide, if you have questions and wish to speak with an attorney, please contact Birmingham AIDS Outreach (Birmingham area) or the Alabama Disabilities Advocacy Program (statewide).



Alabama Disabilities Advocacy Program

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PUBLIC BENEFITS PLANNING

I. APPLYING FOR SOCIAL SECURITY DISABILITY

What do I have to do to get Social Security benefits?

There are two different kinds of Social Security benefits for people disabled by HIV or AIDS. One is called Social Security Disability Insurance benefits (SSDI). The other is called Supplemental Security Income benefits (SSI). You can apply for either one at your local Social Security office or by calling Social Security at 1-800-772-1213.

What is the difference between SSDI and SSI benefits?

SSDI benefits are for people who are “insured,” meaning they have worked long enough and paid Social Security taxes. If you qualify for SSDI benefits based on your earnings and your disability, then you will get your benefits no matter how much money or how many assets you have.

SSI benefits are based on financial need and are for people who have not worked much and have very little money. As of the date of this publication you can only get SSI benefits if you have less than \$2,000 in assets. Please note that some things do not count as assets, even if they are worth more than \$2,000. This includes your home and a car that you use to get to medical appointments. In addition, your income must be below the SSI income limit. The monthly SSI income limit changes every year.

How does Social Security define “disability”?

The term disability does not always mean the same thing; how disability is defined depends on the program. Social Security has a very specific definition of disability. According to Social Security, disability is defined as “inability to perform substantial gainful activity by reason of a medically determinable physical or mental impairment, or combination of impairments, which has lasted or is expected to last at least 12 consecutive months, or end in death, taking into account the individual’s age, education, and work history.”

How does Social Security decide whether I am disabled?

A diagnosis of HIV or AIDS will not automatically qualify you for benefits. Social Security uses the following five step series of questions to decide if an adult is disabled. The questions must be answered in order and if Social Security can make a decision at any step, the process ends.

1. **Are you working?** Generally, you cannot be working and be considered disabled. If you are working and earning more than \$940.00 per month in 2008, your application will be denied.
2. **Do you have a severe condition or combination of conditions that keeps you from working?** A severe condition means you have a physical or mental problem that is expected to last at least 12 months or result in death.
3. **Is the condition one that appears on Social Security’s listing of**

impairments? Social Security maintains a list of impairments for 14 major body systems for adults. Impairments described in these listings are so severe that Social Security presumes that an individual whose impairment(s) meet a listing is disabled. These conditions include cytomegalovirus (CMV), toxoplasmosis of the brain, and pneumocystis carinii pneumonia (PCP).

4. If you have worked in the past, can you do the work you previously did? If so, your claim will be denied. If the answer is no, Social Security goes to the last question.

5. Can you do any other type of work? Social Security will consider your medical condition, age, education and work experience to answer this question.

How long will it take to get my benefits?

It usually takes Social Security between three and six months to look at all your medical records and decide whether you are disabled. If you are applying for SSDI, Social Security has an additional “waiting period.” You cannot get SSDI benefits until you have been disabled for five months.

Is there any way to get Social Security benefits more quickly?

Sometimes Social Security temporarily pays benefits while it gathers the evidence it needs to make a decision on a disability case. This is called “presumptive disability.” To get presumptive disability, your doctor must submit a “presumptive eligibility form,” certifying that you have one of the

conditions that Social Security considers automatically disabling. You can receive presumptive disability for up to six months.

If I receive SSI, will I also receive Medicaid?

Medicaid is a state administered program and each state sets its own guidelines regarding eligibility and services. In Alabama, individuals eligible for SSI benefits are automatically eligible for Medicaid. The SSI application is also the Medicaid application. Medicaid eligibility starts the same month as SSI eligibility.

If you make too much money or have too many assets to be eligible for SSI, you may still be eligible to receive Medicaid services if you are at risk of being placed in a nursing home. These services, including skilled nursing and case management, are provided through the HIV/AIDS Waiver. For more information, contact the Alabama Department of Public Health at 1-800-225-9770.

If I receive SSDI, will I also receive Medicare?

You are automatically eligible for Medicare 24 months after you become entitled to SSDI benefits.

What if Social Security decides I am not disabled?

If Social Security determines that you are not disabled, they will notify you in a letter. You have the right to appeal their decision. Usually, you have to appeal within 65 days of the date on your denial letter. If you are denied, you

Is there anything I can do to make it more likely that I will win my Social Security case?

must request a hearing before an Administrative Law Judge. It can take more than one year for your hearing to be scheduled.

There are many things you can do to make it more likely that you will be able to get Social Security benefits:

1. **Get regular medical care for your HIV and any other health problems you may have.** It is important for Social Security to see that you have an ongoing medical condition that requires regular visits to a doctor.
2. **Remind your doctor of your ongoing problems at every visit, even if they seem like little problems or there does not seem to be much you can do about them.** This includes things like fatigue, diarrhea, night sweats, skin problems, depression, headaches, or any side effects of your medications. You want to make sure all of your medical conditions are fully documented in your medical records.
3. **Keep a diary of how HIV affects you on a daily basis. For example, does HIV make you feel fatigued?** What kinds of activities make you feel fatigued? Do you have diarrhea or nausea after taking your medications?
4. **Think carefully as you complete Social Security forms.** You need to focus on the kind of physical and mental limitations that prevent you from working. If you tell Social Security that your hobby is riding your bike, for example, be sure to also tell them how your ability to ride your

bike has changed since you got sick.

5. If you need help for a substance abuse problem or a mental health problem, try to get the help you need.

I have had a problem with drugs or alcohol. Will that make it easier to get Social Security benefits?

No. If you are an active substance user or a heavy drinker, then it may be harder for you to get Social Security benefits. There are two reasons for this. First, if you are spending a lot of money on drugs or alcohol, Social Security might decide that you must be working to get that money, and therefore you are not disabled. Second, heavy drug or alcohol use makes it harder for Social Security to determine whether your problems are caused by your HIV or your substance abuse. Social Security will not give you benefits if they think by not drinking or using drugs you might be able to work.

I have other health problems besides my HIV. Will Social Security consider those too?

Yes. For example, you may have HIV and chronic depression. Maybe neither one is severe enough to qualify you for Social Security benefits. But together, your HIV and your depression make you disabled. This is why it is extremely important to tell Social Security about all of your health problems.

If I go back to work while receiving SSDI benefits, do I have to tell Social Security?

Yes. You should always report your earnings to Social Security. Social Security rules say you should report any changes in your income within ten days. Talk to a claims representative before you start working, so you will know what and when you have to report. Also, make sure you receive documentation of your report.

II. RETURNING TO WORK WITH HIV/AIDS

I am on SSDI. If I go back to work, will I automatically lose all my SSDI benefits?

No. You will not lose your benefits immediately. Social Security gives people on SSDI a “trial work period” for nine months. You can receive your entire SSDI check during your trial work period. This amount increases each year. Also, the nine months do not have to be consecutive. Your trial work period can be any nine months you work during a five-year period.

Will I lose my SSDI benefits at the end of my “trial work period”?

You will be able to keep your SSDI benefits for three months after your trial work period ends. Afterwards, if you continue working and make more than \$940.00 (in 2008), your SSDI check will stop. However, if you earn less than \$940.00 a month (in 2008) and you are still disabled, your SSDI will continue. The amount you can earn without losing SSDI also increases every year.

Will Social Security count all of my earnings, or am I entitled to certain deductions?

Social Security counts the gross monthly wages you earn (your pay before taxes) minus the expenses you must pay in order to keep your job. Here are the expenses SSA will subtract from your gross wages:

- **Subsidies:** If your employer pays you and you are not really doing the work that would be required of someone else doing your job (because your employer wants to be nice to you), your “earnings” could be

considered a subsidy and the money would not be counted as income.

- **Business-Related Expenses:** People who are self-employed can deduct the reasonable cost of business-related expenses from monthly gross earnings.

- **Impairment-Related Work Expenses (IRWEs):** These are expenses that are necessary to go to work and stay on the job. These include most drugs and medical services. IRWEs can also include items such as personal attendant care, modifications to your home and special transportation. All IRWEs can be deducted from your gross monthly earnings. Social Security must approve any IRWE deductions.

Can I get back on SSDI if I lose my job after the “trial work period”?

The rules on how easily you can get back on Social Security after your trial work period is over depend on how long you have been working and whether Social Security thinks you are still disabled.

For the first 39 months after your trial work period is over, you will have what is called an “extended period of eligibility.” During this period, as long as you are still disabled, you can get your SSDI check any month when you earn under \$940.00 (in 2008). It can be because you got sick, because you quit for some other reason, or just because your work hours got reduced. For the next five years after your extended period of eligibility ends, you can still ask to get your benefits reinstated if you get sick again. Social Security will give you

If I go back to work, how will Social Security decide if I am still disabled?

“provisional benefits” for up to six months while they review your case to see if you are still disabled. If you are disabled, you should get your benefits back.

To decide if you are still medically disabled, Social Security does something called a “continuing disability review,” or CDR. Sometimes you get a CDR even if you do not go back to work; Social Security will review your case every five to seven years no matter what. Starting in 2002, Social Security will no longer do a special CDR just because you go back to work, unless you have been receiving benefits for less than two years. If you have been receiving benefits for less than two years, Social Security may still do a CDR just because you return to work.

During a CDR, Social Security will look at your medical records to decide if you are still disabled. Some people with HIV will clearly still be disabled. You may still have CMV or peripheral neuropathy or one of the other conditions that Social Security always considers severely disabling. Other people may have a harder time proving that they are still disabled. If you originally received benefits because of severe fatigue, night sweats and sinusitis, for example, and those conditions have improved so that you really are functioning much better, then Social Security might conclude that you are no longer disabled under their rules.

Once I return to work, will I lose my Medicare?

Most individuals with disabilities who work will continue to receive at least 102 consecutive months of hospital and supplemental medical insurance under Medicare. During the nine month trial work period and the three month grace period, Medicare Part A continues for free and the Medicare Part B premium is automatically deducted from your SSDI check. Once you no longer receive an SSDI check, you must arrange to pay your Medicare Part B premium yourself. Your Medicare Part A coverage will continue for an additional 93 months at no cost to you. To maintain Medicare Part A coverage beyond 93 months, you must begin to pay your Medicare Part A premium.

I receive SSI instead of SSDI. Do I still get a “trial work period”?

No. The trial work period only applies to people who get SSDI. Your SSI check will be affected as soon as you go back to work.

What will happen to my SSI check if I go back to work?

As your income goes up, your SSI check goes down. If you earn too much money, your SSI check ends completely. However, Social Security wants people on SSI to work, so they do not count some of the money you earn when they are calculating how big your SSI check will be. For example, Social Security does not count the first \$85.00 you make each month. After disregarding the first \$85.00, Social Security only counts half of all the other money you earn in a month. This is called the “earned income disregard.”

Does this mean I can earn as much as I want and still receive SSI?

I am working and my SSI has stopped because I make too much money. If I quit or lose my job, how soon can my SSI benefits start again?

Once I return to work, will I lose my Medicaid?

I receive both SSDI and SSI benefits. Which work incentives apply to me?

No. Once your earned income is roughly twice the monthly SSI benefit rate, you will no longer be eligible for SSI. I

If you quit or lose your job less than 12 months after your SSI benefits stopped, your SSI benefits will start again immediately, so long as you are still disabled. You will not have to fill out a new application. If you have worked longer than 12 months since your SSI benefits stopped, you may need to reapply for SSI.

Your Medicaid coverage can continue, even if your earnings make you ineligible for SSI benefits. You must still be disabled and need Medicaid in order to work. This amount increases a little each year.

Both programs have different rules, and both apply to you.

EMPLOYMENT

I. GETTING HIRED WITH HIV/AIDS

If I apply for a job, can the person interviewing me ask if I have HIV?

No. An interviewer cannot ask you if you have a disability or a medical condition. Generally, you do not have to tell the employer that you are HIV positive. An employer may ask you about your ability to perform certain job-related duties. For example, if you are applying for a job as a stock clerk and the job requires you to lift heavy boxes, the employer could ask you if you are able to lift heavy items.

Are there jobs I am not allowed to have because I am HIV positive?

The only job you would not be allowed to have is one in which you would present a direct threat to the health and safety of others. For example, a hospital could probably refuse to hire someone as a surgeon if she is HIV positive. However, to refuse you a job, an employer must show that you would pose a direct threat to the health and safety of others by carrying out the routine job duties of the position you applied for. For example, if you were applying for a job as a secretary, an employer could not say that you might accidentally cut yourself and therefore pose a direct threat to others.

Can an employer ask me to take an HIV test?

Under certain circumstances, an employer may require that a person applying for a job take a medical examination. You should only be required to take this exam if the employer has already offered you a job, and if everyone applying for the job has to take the exam also. As part of the exam, the employer could legally require you to take an HIV test. However, the employer cannot refuse to hire you based on the result of that HIV test, unless your being positive would pose a direct threat to the health and safety of others. Most employers do not test applicants for HIV because HIV is irrelevant to most jobs, and because HIV typically does not pose a direct threat to others.

I am returning to work after a long absence due to illness. How do I explain the gap in my resume?

This can be a very difficult question to answer. Each person's situation will be different. The most important thing is to prepare an answer for this question, in case it comes up in the interview. Did you do something interesting during your break from work? Did you travel, take a class, or learn a new skill? Did you do some work out of your home? You can focus on those things. If you have to explain a long absence, it is best to explain it quickly and then move on to the positive points of your resume. Remember, your goal in an interview is to show that you are the right person for the job.

What should I do if my employer requires a drug test and I am taking medication for my HIV/AIDS?

At least one HIV medication (Sustiva) can produce a false positive if you are tested for illegal drugs. We advise you to take a letter from your doctor which states that you take a medication which can produce a false positive on your drug test. Also, ask your doctor to say that the medication is for a condition that does not affect your ability to perform the essential functions of the job. In most instances, these tests are not run by your employer, but by an outside contractor; the employer should not receive your questionnaire. However, you may also want to place a cover letter on the questionnaire which specifically states that it includes information protected by law, which may not be shared with your employer. You should not wait for the false positive before disclosing your prescription drugs. Once there is a positive test that seems to indicate exposure to an illegal drug, it is much harder to provide an explanation. In fact, if this is a conditional offer medical screen, you even run the risk of having the job offer rescinded for misrepresentation.

II. WORKING WITH HIV/AIDS

Can my boss fire me because I am HIV positive?

No. The Americans with Disabilities Act (ADA) makes it illegal for an employer to fire someone because of his or her HIV status. It would also be illegal for your employer to demote you, reduce your pay, or in any way make your job worse based solely on your HIV status.

Although you cannot be fired because of your HIV status, it is important to realize that you can be fired for almost any other reason. The State of Alabama is an employment at will state. This means that either you or your boss may terminate your employment at any time, for any reason, with or without notice, as long as your boss does not discriminate against you. In Alabama, it is illegal to discriminate on the basis of age, sex, race, color, religion, national original, or disability (but not sexual orientation).

What is the Americans with Disabilities Act (ADA)?

The Americans with Disabilities Act is a powerful federal law that makes discrimination against people with disabilities (like HIV) illegal. The ADA prohibits employers with 15 or more employees from firing, demoting, refusing to hire, or otherwise discriminating against people solely because they have a disability like HIV. The ADA also protects people associated with a person with HIV, or people believed to be HIV positive. The ADA is also important because it gives you the right to a “reasonable accommodation” at work so that you can keep doing your job.

What is a “reasonable accommodation”?

A reasonable accommodation is a change in your workplace or work routine that makes it possible for you to keep doing your job. One of the most common reasonable accommodations is a flexible work schedule. Here are some examples of flexible work schedules:

- Starting work at 9 a.m. instead of 8 a.m.
- Taking one afternoon off each month to visit the doctor

- Taking an hour break in the afternoon to rest
- Working at home one day per week

There is no such thing as a “standard” reasonable accommodation. Each accommodation is created for the specific requirement of the person who needs it. Also, whether a particular accommodation is reasonable depends upon many factors, including the size of your company and the nature of your job duties.

Am I entitled to a reasonable accommodation?

The ADA says that a person with a disability is entitled to a reasonable accommodation if that person can perform the “essential job functions.” In other words, if you satisfy the job requirements (e.g., experience, skills, or education) and if the accommodation will make you able to do all of your essential job functions, you are entitled to that accommodation.

Can my employer refuse to grant me a reasonable accommodation?

There are only two situations in which an employer can refuse to grant a reasonable accommodation: (1) the company employs fewer than 15 employees and is not covered by the ADA; or (2) the accommodation causes the company “undue hardship.” Undue hardship means the accommodation creates an unfair burden on the employer. For example, a small business might not be able to afford to put in an elevator to help an employee reach its second-floor office, or a small law firm might not be able to function if the

only receptionist took an hour-long nap every afternoon.

Also, your employer may not have to grant you the exact accommodation that you request. If, for example, you suffer from chronic fatigue and ask to be allowed to come into work any time between 9 a.m. and 11 a.m., your boss may have a right to insist on a more regular schedule. You might compromise and request to be allowed to come to work each day at 10 a.m.

How do I get a reasonable accommodation?

You have to ask for it. An employer does not have to offer you an accommodation unless you ask for one. You should meet with your boss, as well as anyone else you think you need to inform (such as the head of personnel) and explain that you are requesting a reasonable accommodation under the ADA. In addition, you should always put your request in writing.

Do I have to disclose my HIV status to request a reasonable accommodation?

When an employee asks for a reasonable accommodation, the employer can ask for medical documentation to verify the existence and nature of the disability. This is usually a letter from your doctor. To avoid disclosing your HIV status when requesting an accommodation, you could first try disclosing the actual disabling condition (e.g., fatigue or lymphoma). For an employee who is HIV positive and in good health, but who wants an accommodation to take time off to see the doctor regularly, it may be impossible to avoid disclosing HIV status. In any event, if you have to disclose your HIV status, make sure you stress to your employer that your HIV status should be kept confidential.

What is the Family and Medical Leave Act (FMLA)?

The Family and Medical Leave Act is a federal law that went into effect in 1993. It allows employees to take time off from their jobs in certain circumstances and guarantees their right to return to their job. It might entitle you to up to 12 weeks of unpaid sick leave each year from work. Employees can take FMLA time for their own serious health conditions, or for the serious health conditions of their children, parents or spouse.

Am I eligible for time off under FMLA?

First of all, FMLA applies only to companies that have 50 or more employees. Secondly, you are eligible for FMLA leave if you have worked at your job for at least 52 weeks, averaging 25 hours of work per week.

What is a “serious health condition”?

According to the FMLA, a serious health condition is either (1) a physical or mental condition that requires you to be hospitalized; or (2) a physical or mental condition that requires you to get continuing treatment from a doctor. Most people with HIV-related symptoms would have a “serious health condition.”

How do I get FMLA time off?

If you are eligible, you must request FMLA time off from your employer. The law says that you should ask for FMLA time off at least 30 days in advance, if possible. Of course, sometimes that is not possible. If you cannot give a 30 day notice, you should ask for FMLA time as soon as you know you are going to need it.

Do I have to disclose my HIV status to get FMLA leave?

When an employee asks for FMLA leave, the employer may require a note from a doctor supporting the request for leave. To avoid disclosing your HIV status, you could first try disclosing the actual disabling condition (e.g., fatigue or lymphoma). If you are HIV positive and in good health, but need FMLA time to see your doctor regularly, it may be impossible to avoid disclosing your HIV status. In any event, if you have to disclose your HIV status, make sure you stress to your employer that your status should be kept confidential.

Will I get paid during my leave?

No. The FMLA does not require an employer to pay you for the time you are not working. However, you may qualify for some pay under your employer's short-term disability plan, if your company offers this benefit.

Do I have to take my leave all at once?

No. When medically necessary, leave may be taken on an intermittent or reduced schedule basis. This may include periods such as an hour per day to lie down after taking medication or several days per month for doctor visits.

If I take my FMLA time off on an intermittent basis, does my employer have to keep me in the same job?

If you take FMLA time intermittently, your employer may require you to transfer temporarily to an alternative position that better accommodates your recurring periods of absence. The position would have to offer the same pay and benefits.

What happens to my health insurance when I take FMLA leave?

During your FMLA leave, your health insurance must be continued and your company must continue to pay its share of your health insurance premiums. You will have to pay whatever share of the premium you usually pay.

Does the FMLA let me take time off to care for my partner who is dying of AIDS?

Unfortunately, the FMLA only lets you take time off to care for a spouse, a child or a parent.

Can my employer fire me or retaliate in some way against me for taking FMLA time off?

If you are entitled to FMLA time off, then your employer cannot retaliate against you for taking that time.

PRIVACY & CONFIDENTIALITY

I. DISCLOSING YOUR STATUS

What is the difference between an anonymous test and a confidential test?

In general, there are two kinds of tests, anonymous and confidential. If you have an anonymous test, your name will not be recorded. Instead, you will be given a number. If you have a confidential test, your name will be used and your positive test results will be reported to certain people. Alabama does not offer anonymous tests.

If I test positive for HIV, who will be notified?

Under Alabama law, the person who administered your HIV test must notify the Alabama Department of Public Health if you are positive. This report will include your full name, date of birth, race, sex, marital status, address, telephone number, place of employment, stage of disease, medication, and date of onset.

Will anyone else be notified?

In Alabama, your doctor is allowed to tell certain people of your HIV status, such as emergency personnel or a funeral home director. In addition, the doctor can probably notify your spouse. If you are a student, your doctor may also notify the superintendent of your school. If your doctor releases your medical records to anyone else without your written consent, he or she is guilty of a Class C misdemeanor.

I want to get an HIV test, but I am afraid to ask my parents. How old do I have to be to get tested?

Anyone 12 years of age or older can consent to HIV testing and treatment. Although your doctor is not required to tell your parent(s), he or she has the right to do so.

Can I be forced to take an HIV test?

In general, you must give your consent before you can be tested. However, Alabama law gives doctors the discretion to determine when consent is implied.

Alabama recently passed a law that could affect you if you are charged with rape, sodomy, or sexual misconduct. If the court finds that there is probable cause to believe that you committed one of these crimes, you may be required to submit to an HIV test. However, the results of this test will only be available to the victim, the victim's guardian, the victim's doctor, and you.

What if someone, other than my doctor, is telling people that I am HIV positive?

Once someone knows your HIV status, it can be very difficult to stop that person from telling other people. A lawsuit against this person is likely to be unsuccessful unless the person is telling a large number of people about your status. For example, if your neighbor printed a flyer and distributed it to the neighborhood, you may have a successful claim. Since privacy protection is so limited in Alabama, it is extremely important for you to guard your status.

II. PRIVACY AT WORK

If I go back to work, do I have to tell my boss I am HIV positive?

No. You do not have to tell your employer you are HIV positive. Some people choose to tell their boss that they are HIV positive because they believe that their boss will be supportive. Some people choose not to tell because they do not want anyone in their company to know. The choice is yours.

Is it ever a good idea to tell my boss I am HIV positive?

The decision to tell your boss you are HIV positive is a very personal one. Usually, we advise you not to disclose your status. However, if you feel that your boss is discriminating against you because he suspects you are HIV positive, it might be a good idea to disclose your status to protect your rights. It is always a good idea to speak with an attorney before you disclose your HIV status to your employer.

If I tell my boss I am HIV positive, will my co-workers have to be told?

Several federal laws address the privacy of your medical information. For example, the Americans with Disabilities Act specifically addresses how employee medical records should be handled, where they should be stored, who may see them, and when employees must divulge medical information.

Generally, all information regarding your medical condition or history should be treated as confidential medical records, maintained on separate forms and in separate medical files.

Can my employer get a copy of my medical records?

Your boss can tell first-aid personnel that you have HIV, but only if the disclosure is necessary to protect your health.

No. Your medical records are confidential. The only way your employer can get them is if you sign a release authorizing your employer to get them.

PLANNING FOR THE FUTURE

I. WILLS

What is a will?

A will is a legal document that lets you do at least three important things:

- Put someone in charge of your estate (all your possessions) after you die. This person is called your executor.
- Decide who inherits your money and possessions after your death.
- Nominate a guardian for your children.

It is important to know that a will only goes into effect after death. In other words, if you write in your will that all of your household furnishings should go to your sister, then she would not receive them until after you have passed away. Writing a will does not mean that you have given up control of anything in your life.

Is a will the same thing as a living will?

No. A living will is a legal document that explains how you feel about artificial life support. For example, it tells a doctor whether you want to be kept alive on a machine. It does not pass your property after death like a will does.

What happens if I die without a will?

If you have no will when you die, Alabama law directs where your possessions go. For example, if you have a legal spouse but no children and no surviving parent, then your spouse would inherit everything you own. If you die without a will, the only people who have a right to inherit anything are your spouse or members of your biological family. Alabama does not recognize same-sex marriages at this time. If you are gay, your partner would have no right to inherit anything, even if the two of you had lived together as a couple for many years.

Can I prepare a will myself?

Anyone can write a will for himself or herself. However, the will that you write for yourself may not hold up after you die. When it comes to wills, Alabama law is extensive and complicated. We advise anyone who wants a will to seek out a competent attorney.

What information do I need to put into my will?

Here are the important things you should decide before preparing your will:

- Who do you want as your executor? The executor is the person in charge of your belongings after you die. This person is responsible for giving your possessions to the people you name in your will, and for making sure that any debts you owe are paid. Your executor will not have to pay your debts with his or her own money. Instead, the executor pays the debts with whatever money you have when you pass away.

- Who do you want to inherit your things? If you have valuable or treasured possessions, you can state in your will how you would like those things distributed after your death. You can be as specific or general as you wish. Some people list all of their possessions in their will (such as a television, a stereo, pieces of jewelry) and then say who should receive each thing. This approach is very thorough, but if you change your mind about one item, you have to re-execute your will. Instead, many people leave everything to their executor and then inform their executor of their wishes. That way, if you change your mind later, you can just tell your executor. However, if you choose this option, your executor is not legally bound to honor your wishes.

- Who should take care of your children after your death? In Alabama, you can nominate a guardian for your children in your will. If the surviving parent has no parental rights or does not contest the nomination, a parental nomination becomes effective when the guardian files an acceptance in the court in which the will is probated. This method of permanency planning for your children is usually adequate when you do not anticipate a contest by the surviving parent. On the other hand, if you are concerned that the surviving parent will disagree with your choice of guardian, it may be prudent to explore other options, including termination of parental rights.

Who should I name as my executor?

Your executor should be someone you trust. The person should be responsible and organized. Your executor does not have to be a family member. It is best to make sure the person you choose is willing to be your executor before you name him or her in your will. It is also a very good idea to name someone as your alternate executor. Your alternate executor is the person who takes over if your executor is unable to carry out his or her duties as executor. For example, if your executor dies before you do, then your alternate executor would take over. You can name as many alternates as you like.

In order to be an executor or alternate executor, a person must be at least 18 years old, a resident of the United States, and cannot have been convicted of an “infamous” crime.

Where should I keep my will?

It is best to keep your will in a safe, dry place. Make sure your executor knows where it is. It is also a good idea to give your executor a copy of your will. If you have named an alternate executor(s), then that person should get a copy as well.

Can I change my will in the future?

Yes. If you change your mind about some of the items in your will, you can create a new will. Sometimes people need a new will because the person they named as executor has passed away, or because they have moved to a different state.

Can anyone challenge my will after I die?

People can try to challenge your will after you die. They would have to file a lawsuit to challenge the will. There are two ways that people commonly challenge wills:

- They will say you were not in your right mind when you signed your will. For example, someone might say you had HIV-related dementia when you signed your will. Therefore, you did not know what you were signing. If you have any history of cognitive or mental impairments, it might be a good idea to meet with your doctor before signing your will so that he can note in your medical records that you are competent to complete a will.
- They will say someone forced you to make out the will. Your will is not valid if someone forced you or coerced you to sign it, or if someone influenced your decisions in the will. For example, if your sister said that you had to give her your house or she would tell your parents about your HIV status, then she has used “undue influence” over you, and your will could be made invalid.

II. ADVANCE DIRECTIVES

Do I have the right to make decisions about my medical care?

If you are 19 or older, the law says you have the right to decide about your medical care. If you are very sick or badly hurt, you may not be able to say what medical care you want. If you have an advance directive, your doctor and family will know what medical care you want if you are too sick or hurt to talk or make decisions.

What types of advance directives are available in Alabama?

In Alabama, the choices you have include a living will, a proxy, and a durable power of attorney for health care.

What is a living will?

A living will is used to write down what kind of care you do or do not want if you are too sick to speak for yourself. Typically, a living will takes effect when you become terminally ill or permanently unconscious.

What is a proxy?

A proxy can be part of a living will. A proxy is a person you pick to speak for you and make the choices you would make if you could. You do not have to name a proxy in order to have a living will.

What is a durable power of attorney for health care?

A durable power of attorney for health care is another way to name someone to make the medical decisions you would make if you could. This person is called your “agent” or “attorney-in-fact.”

Why do I need a durable power of attorney for health care if I already named a proxy in my living will?

The person you name as your proxy in your living will can only make decisions if you are terminally ill or permanently unconscious. For example, if you were only temporarily unconscious, the person listed in your living will may not be able to make decisions for you. In order to be protected at all times, you should consider supplementing your living will with a durable power of attorney for health care.

Where should I keep my advance directive?

Keep your advance directive in a safe, dry place. If you name someone to make decisions you should give this person a copy. You should also ask your primary doctor to add a copy to your medical file. If you go to the hospital, give a copy to the person who admits you.

Will the person I name in my durable power of attorney for health care also be able to make financial decisions for me?

No. If you want to name someone you trust to take care of your financial affairs, you should execute a durable power of attorney for property. You can give this person as much or as little power as you like. Typically, this person can do things like sign your checks, buy and sell things for you, and pay your bills.

FINANCIAL EXPLOITATION

Can I stop creditors from harassing me?

The Fair Debt Collection Practices Act (FDCPA) is a federal law designed to eliminate abusive debt collection practices by debt collectors. It clearly defines the rules that bill collectors and collection attorneys must comply with when attempting to collect debts. Under the FDCPA, you have the right to stop harassing collectors from communicating with you. Once you notify a debt collector that you wish for her to cease further communication, she may only communicate with you in order to (1) advise you that she is abandoning her collection efforts; or (2) notify you that she intends to sue you in court.

I get SSI or SSDI but I cannot pay my bills. Can my creditors take my money?

In most instances, your creditors are legally barred from garnishing your SSI or SSDI check. This does not mean that your creditor cannot sue you. It simply means that your creditors cannot take your SSI or SSDI in order to satisfy a judgment against you.

Do I have to pay property taxes if I am disabled?

If you live in a single-family home and are disabled, you may qualify for an exemption. To qualify for this exemption, you must have two letters from your doctors. The Tax Assessor's Office will accept one letter signed by two doctors, or a certificate of disability from Social Security and one letter from

a doctor. These documents must state that you are totally and permanently disabled. The disability exemption can only be claimed between October 1st and December 31st.

I have student loans that I cannot repay. Is there anything I can do?

It is possible to have your student loan debt discharged under certain specific circumstances. The procedure may vary depending on where you have your loan. In general, to qualify for a student loan discharge, you must submit an application, including a physician's certification of total and permanent disability. This application should be mailed directly to the student loan service provider.

If I cannot pay my bills, should I claim bankruptcy?

This is a very personal decision, greatly influenced by the amount of serious debt and your ability to meet the original payments or pay the full amount. Depending on your circumstances, bankruptcy may or may not make sense for you. For example, you do not need bankruptcy protection if you have nothing that a creditor with a judgment could take from you. This is commonly called being "judgment proof." The decision as to whether and when to file a bankruptcy petition should be based upon the facts of your individual case. We suggest you consult with an attorney skilled in bankruptcy law if you have additional questions.

INSURANCE

Is it better to get individual health insurance or group health insurance?

Generally speaking, if you are HIV positive, it is better to have group health insurance. Your premiums are likely to be lower, the coverage will probably be better, and your rates are likely to stay relatively stable compared to an individual policy. Many people get group health insurance through their employer. If your company does not offer health insurance or if you work for yourself, you should consider other groups that you could join that offer insurance. For example, if you are a free-lance writer, is there a national writers' association that offers insurance?

Can I call an insurance company and buy an individual health insurance policy?

Getting an individual health insurance policy is very difficult if you are HIV positive. It is legal for the insurance company to test you for HIV. In Alabama, it is also legal for an insurance company to refuse to provide individual insurance to people with HIV. Therefore, most insurance companies are unwilling to write a policy for someone who has HIV. If you can find an insurance company that is willing to offer you a policy, it is likely that the premiums will be very high. In other words, an individual health insurance policy may not be worth the expense.

Is there any other health insurance I can get?

The State of Alabama offers a health insurance plan designed for people who have exhausted coverage through a former employer and have no other group health care coverage available. The Alabama Health Insurance Plan (AHIP) offers two types of plans, a traditional indemnity plan through Blue Cross and Blue Shield of Alabama, and a managed care plan through United Health Care. Both plans cover many of the same general types of services, including doctor visits, prescription drugs and hospitalizations. They also cover emergency care while you are away from home. To take advantage of AHIP, you (1) must not be eligible for any other group health plan; and (2) cannot have been without coverage for 63 days or more. For more information about AHIP or to request an enrollment package, call 1-877-619-2447.

In addition, the AIDS Drug Assistance Program (ADAP) provides medications for the treatment of HIV/AIDS. Each individual state determines who is eligible to participate in the program, as well as which medications will be included in the ADAP formulary. To be eligible for the ADAP in Alabama, you must (1) be an Alabama resident; (2) have income at or below 250% of the current federal poverty level; (3) not be receiving your HIV medication through Medicaid or Medicare Part D; and (4) not have third party insurance that pays for more than 50% of the cost of covered medications.

Can I get insurance from my employer?

You can apply for ADAP through your doctor's office, county health department, or local AIDS service organization.

I am applying for insurance through work and the application asks if I am HIV positive. If I say yes, will I still get the insurance?

A company may offer health insurance to its employees, but it is not required to do so. Also, a company does not have to offer insurance to all of its employees; often a company will offer insurance only to full-time employees. If your company does not offer insurance to anyone, you cannot force it to do so. However, if your employer does provide insurance to its employees, then every employee eligible for insurance must be accepted onto the policy. If you are eligible for insurance, then you must be offered coverage.

Can my new employer refuse to offer me health insurance because he thinks I will cost him too much money?

If you are eligible for group coverage through work, then you should not be denied the insurance, even if you disclose your HIV status. It is important to never lie on your insurance application. If you do and the insurance company finds out later, the company may have the right to cancel your policy.

No. If you are eligible for group insurance on your job, then it must be offered to you.

If I have to disclose my HIV status on my insurance application, how can I prevent my employer from seeing it?

This can be difficult because employers will often ask you to turn your insurance application in to the human resources department, which will then send the application to the insurance company. You might try asking the human resources department if you could send your application directly to the insurance company yourself. You could explain that you would prefer not to give your confidential health information to your employer. If you cannot send it directly to the insurance company, you might want to attach a note saying that it contains confidential information.

If I get insurance at a new job, will the policy pay for my pre-existing conditions?

The answer depends on the terms of your insurance policy, and whether you have other insurance when you start the job.

Not all insurance policies exclude coverage of pre-existing conditions. Many HMO's will pay for any condition you have, whether you had it before you got on the HMO or not. It is important for you to read your policy carefully to understand what it will cover. If the policy is too difficult for you to understand, ask someone to explain it to you.

Many insurance policies refuse to pay for pre-existing conditions. However, even if your new insurance policy does contain a pre-existing condition exclusion, that exclusion may not apply to you, according to a law called the Health Insurance Portability and Accountability Act (HIPAA).

How can HIPAA help me avoid the pre-existing condition exclusion?

This law says that if you had health insurance for at least 12 months in a row before getting your new policy, then the new policy must pay for any pre-existing condition. For example, if you had insurance through an old job for two years and then you got new insurance at a new job, the new insurance has to cover your HIV just as it covers any other health problem you might have.

If you have not had insurance for at least 12 months in a row before getting new insurance, HIPAA may still help you. The number of months that you did have insurance can be applied to the pre-existing condition limitation on your new policy. For example, if you had insurance for eight months before you got your new policy, you can reduce the one-year limitation period by eight months. That means that your new policy can only refuse to pay for any pre-existing condition for four months.

It is important for you to know that HIPAA will only help you if you have not had a gap of more than 63 days between the old insurance coverage and the new insurance coverage.

I have insurance through work. If I am fired or quit, can I keep that insurance policy?

If you work for a company that has 20 or more employees and you leave your job, you have the right to continue your health insurance through a federal law called COBRA. COBRA covers you whether you leave your job

voluntarily or are laid off. The only time COBRA does not cover you is if you are fired for gross misconduct.

What are my rights under COBRA?

COBRA says that you can continue your health insurance for at least 18 months after you leave your job. Although your employer may have paid part or all of the premium while you were working, you will have to pay the full COBRA premium yourself. The coverage that you get must be identical to the coverage you had while working. COBRA gives you the right to continue your health insurance, but not life or disability insurance.

If you are disabled according to Social Security when you elect COBRA, or if you become disabled within 60 days of electing COBRA, then you can continue your insurance for 29 months. If you are found eligible for Social Security while you are on COBRA, you must tell your former employer immediately so that you can get the extra months of COBRA coverage.

How expensive is COBRA?

The premium for your COBRA insurance must be nearly identical to the premium paid for your coverage while you were working. COBRA says that the new premium can be no more than 102% of the old premium. If, for example, your insurance premium was \$100 a month while you were working, your COBRA premium can be no more than \$102.

Can my insurance company cancel my policy if they find out I am HIV positive?

No. Testing HIV positive is not valid grounds for termination of an insurance policy. It is very likely that when you submit your first HIV-related claim, your insurance company will investigate that claim. The insurance company will probably request medical records, and will ask you to provide the names of all the doctors you have seen in recent years. Essentially, the insurance company is looking to see when you were diagnosed with HIV. If it turns out that you lied about your HIV status on the application, then the insurance company could cancel your policy. If the information you provided on your application is accurate, then the insurance company could not cancel your policy just because it found out you are HIV positive.

HOUSING

Can someone refuse to rent to me because I am HIV positive?

No. It is illegal to discriminate in the sale or rental of housing on the basis of HIV status. In addition, you cannot be discriminated against in housing because of your “association” with an HIV positive person. This means you cannot be discriminated against because your roommate, partner, friend or relative has HIV.

The heat in my apartment does not work and my landlord refuses to fix it. Is there anything I can do?

Alabama law requires your landlord to make sure that your apartment is habitable. In order to be habitable, your apartment must have the basics, including working heat, electricity, and water. If something is not working, notify your landlord in writing. If your landlord refuses to correct a major problem within 14 days, you are allowed to break your lease.

How much can my landlord charge for a security deposit?

In general, a security deposit should not exceed one month’s rent. However, your landlord may be able to charge you more if you have pets or you increase the landlord’s liability risks.

Will I get my security deposit back?

Alabama recently passed the Alabama Uniform Residential Landlord and Tenant Act. Under this law, your landlord has 21 days to refund your money or give you an itemized list of charges. If your landlord fails to do this, the

law requires that the landlord pay you twice the amount that should have been refunded.

Can I be evicted even though I have HIV/AIDS?

Yes. You may still be evicted from your apartment if you fail to meet the terms of the rental agreement. However, you may not be evicted because of your HIV status.

If my landlord evicts me, do I have to leave my apartment?

By law, your landlord cannot physically force you to leave your apartment. To legally evict you, your landlord must go to court. Only a judge can legally evict you. An eviction letter from your landlord is not the same as an eviction order from a judge. You should receive a written notice informing you of the court date if your landlord goes to court to evict you.

Is there special housing for people with HIV/AIDS?

AIDS Alabama provides housing assistance throughout the State, including permanent housing, transitional housing, day rehabilitation, and rental assistance. For more information, contact AIDS Alabama at (205) 324-9822.

In addition, your local housing authority may have special programs for people living with HIV/AIDS. For example, the Shelter Plus Care Program provides rental assistance to homeless persons with disabilities, including HIV/AIDS. For more information on the Shelter Plus Care Program and other housing opportunities, contact your local housing authority.

This legal guide is produced by the Alabama Disabilities Advocacy Program (ADAP). ADAP launched “Aiding Alabama,” an ambitious new project designed specifically to protect the legal rights of people living with HIV/AIDS. This project is based on the recognition that being positive can create distinct legal needs.

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At the time of this publication, over 14,000 people have been diagnosed with HIV/AIDS in Alabama. This legal guide is dedicated to those loved ones we have lost, as well as to those who continue to bravely fight for a better tomorrow.



This guide is intended as an overview of HIV-related Alabama and federal law. The information contained within this guide is not legal advice, and should not be relied upon as such. As with any legal matter, the reader is encouraged to retain the services of an attorney for legal advice.



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