

MEDICARE SUPPLEMENTALS POLICIES: RESTRICT USE OF GENETIC INFORMATION

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House Bill 5234

Sponsor: Rep. Barb Byrum

Committee: Insurance

Complete to 9-9-09

A SUMMARY OF HOUSE BILL 5234 AS INTRODUCED 8-11-09

The bill would amend Chapter 38 of the Insurance Code, which regulates Medicare supplemental (or "Medigap") policies and contracts, to prohibit certain uses of genetic information in underwriting and setting prices, including the exclusion of benefits based on preexisting conditions.

Medicare is regulated by the federal government under Title XVIII of the Social Security Act. Medicare supplement policies and contracts (also known as "Medigap" policies) are also governed by that federal law. A Medicare supplement policy or certificate is insurance that allows individuals to cover expenses for health care not paid for by Medicare.

The bill applies to policies and certificates delivered, issued for delivery, or renewed on or after May 21, 2009. The bill is understood to be necessary to bring Michigan law into compliance with a recent federal law, the Genetic Information Nondiscrimination Act of 2008.

The term "insurer" in this section of the Insurance Code includes any entity, including Blue Cross and Blue Shield of Michigan, delivering or issuing for delivery in this state Medicare supplement policies. For the purposes of the bill, the term also includes a third-party administrator or other person acting on behalf of an insurer.

Under the bill:

- An insurer would be prohibited from:
 - (1) Denying or conditioning the issuance of a policy or certificate on the basis of genetic information with respect to that individual. This includes the imposition of any exclusion of benefits under the policy based on a preexisting condition.
 - (2) Discriminating in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of genetic information with respect to that individual.

However, this would not limit the ability of an insurance company, to the extent otherwise permitted by law, from:

- (1) Denying or conditioning the issuance or effectiveness of a policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or and applicant.
 - (2) Increasing the premium for any policy issue to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy. However, the manifestation of a disease or disorder in one individual could not be used as genetic information about other group members and to further increase the premium for the group.
- An insurer would be prohibited from requesting or requiring an individual or a family member of that individual to undergo a genetic test.

However, this would not preclude an insurer from obtaining or using the results of a genetic test in making a determination regarding payment. An insurer could request only the minimum amount of information necessary to accomplish the intended purpose.

Further, an insurer could request, but not require, that an individual or family member of that individual, undergo a genetic test if each of the following conditions were met:

- (1) The request is made for research purposes that meet applicable federal, state, and local laws or regulations for the protection of human subjects in research.
 - (2) The insurer clearly indicates to each individual (or to a legal guardian, in the case of a child) that compliance with the request is voluntary and that noncompliance will have no effect on enrollment status or premium or contribution amounts.
 - (3) Genetic information collected or acquired could not be used for underwriting, determination of eligibility to enroll or to maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.
 - (4) The insurer notifies the commissioner of the Office of Financial and Insurance Regulation (OFIR) in writing that the insurer is conducting activities under the exception, including a description of the activities conducted.
 - (5) The insurer complies with any other conditions imposed by the OFIR commissioner.
- An insurer would be prohibited from requesting, requiring, or purchasing genetic information for underwriting purposes.

- An insurer could not request, require, or purchase genetic information with respect to any individual prior to the individual's enrollment under the policy in connection with that enrollment. It would not be a violation, however, if an insurer obtained genetic information incidental to the requesting, requiring, or purchasing of other information.

Definitions

"Underwriting purposes" refers to (1) rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy; (2) the computation of premium or contribution amounts under the policy; (3) the application of any preexisting condition exclusion under the policy; and (4) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

"Genetic Information" is defined to mean, with respect to any individual, information about that individual's genetic tests, the genetic tests of family members, and the manifestation of a disease or disorder in family members. The term includes any request for or receipt of genetic services (including counseling) or participation in clinical research that includes genetic services by the individual or family members. Any reference to genetic information concerning an individual or family member who is a pregnant woman includes genetic information of any fetus carried by the pregnant woman. It also includes, with respect to an individual or family member using reproductive technology, the genetic information of any legally held embryo.

"Genetic test" refers to an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. The term does not include an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or an analysis of proteins or metabolites directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the relevant field of medicine.

FISCAL IMPACT:

The bill would have no apparent significant fiscal impact on the state.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.