

Act No. 219
Public Acts of 2009
Approved by the Governor
January 5, 2010
Filed with the Secretary of State
January 5, 2010
EFFECTIVE DATE: January 5, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Senator Sanborn

ENROLLED SENATE BILL No. 744

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," (MCL 500.100 to 500.8302) by adding section 3829a.

The People of the State of Michigan enact:

Sec. 3829a. (1) This section applies to all medicare supplement policies or certificates delivered, issued for delivery, or renewed on or after May 21, 2009.

(2) An insurer of a medicare supplement policy or certificate shall not do either of the following:

(a) Deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a preexisting condition, on the basis of the genetic information with respect to that individual.

(b) Discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to that individual.

(3) Nothing in subsection (2) limits the ability of an insurer, to the extent otherwise permitted by law, from doing either of the following:

(a) 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 applicant.

(b) Increasing the premium for any policy issued 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 1 individual cannot be used as genetic information about other group members and to further increase the premium for the group.

(4) An insurer of a medicare supplement policy or certificate shall not request or require an individual or a family member of that individual to undergo a genetic test.

(5) Subsection (4) does not preclude an insurer of a medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the health insurance portability and accountability act of 1996, 42 USC 1320d to 1320d-8, and consistent with subsection (2).

(6) For purposes of carrying out subsection (5), an insurer of a medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(7) Notwithstanding subsection (4), an insurer of a medicare supplement policy may request, but not require, that an individual, or a family member of that individual, undergo a genetic test if each of the following conditions is met:

(a) The request is made pursuant to research that complies with 45 CFR part 46, or equivalent federal regulations, and any applicable state or local law or regulations for the protection of human subjects in research.

(b) The insurer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of that child, to whom the request is made, that compliance with the request is voluntary and that noncompliance will have no effect on enrollment status or premium or contribution amounts.

(c) Genetic information collected or acquired under this subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(d) The insurer notifies the commissioner in writing that the insurer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(e) The insurer complies with any other conditions as the commissioner may by regulation require for activities conducted under this subsection.

(8) An insurer of a medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(9) An insurer of a medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to that individual's enrollment under the policy in connection with that enrollment.

(10) If an insurer of a medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, that request, requirement, or purchase is not a violation of subsection (9) if that request, requirement, or purchase does not violate subsection (8).

(11) As used in this section:

(a) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of that individual.

(b) "Genetic information" means, with respect to any individual, information about that individual's genetic tests, the genetic tests of family members of that individual, and the manifestation of a disease or disorder in family members of that individual. Genetic information includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by that individual or any family member of that individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman includes genetic information of any fetus carried by that pregnant woman or, with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. Genetic information does not include information about the sex or age of any individual.

(c) "Genetic services" means a genetic test, genetic counseling, including obtaining, interpreting, or assessing genetic information, or genetic education.

(d) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. Genetic test does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is 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 field of medicine involved.

(e) "Insurer of a medicare supplement policy or certificate" includes a third-party administrator or other person acting for or on behalf of that insurer.

(f) "Underwriting purposes" means all of the following:

(i) Rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy.

(ii) The computation of premium or contribution amounts under the policy.

(iii) The application of any preexisting condition exclusion under the policy.

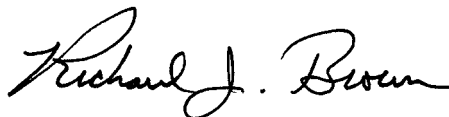
(iv) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5235 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved.....

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Governor

Compiler's note: House Bill No. 5235, referred to in enacting section 1, was filed with the Secretary of State January 5, 2010, and became 2009 PA 220, Imd. Eff. Jan. 5, 2010.