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BILL ANALYSIS



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Senate Bill 744 (as introduced 8-19-09)  
Sponsor: Senator Alan Sanborn  
Committee: Economic Development and Regulatory Reform

Date Completed: 10-14-09

### **CONTENT**

**The bill would amend Chapter 38 (Medicare Supplemental Policies and Certificates) of the Insurance Code to do the following:**

- **Prohibit an insurer of a Medicare supplement policy or certificate from denying or conditioning coverage, or discriminating in pricing, on the basis of genetic information.**
- **Prohibit a Medicare supplement insurer from requesting or requiring a genetic test.**
- **Allow an insurer to obtain and use genetic test results for the purpose of making a payment determination, pursuant to Federal regulations.**
- **Allow an insurer to request, but not require, an individual to undergo genetic testing voluntarily under certain circumstances.**
- **Prohibit an insurer from requesting, requiring, or purchasing genetic information for underwriting purposes.**

The bill specifies that it would apply to all Medicare supplement policies (also called "Medigap" policies) or certificates delivered, issued for delivery, or renewed on or after May 21, 2009.

#### Prohibited Uses of Genetic Info

Under the bill, an insurer of a Medicare supplement policy or certificate could not do either of the following:

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

To the extent otherwise permitted by law, this prohibition would not limit the ability of an insurer to do either of the following:

- Deny or condition the issuance or effectiveness of a policy or certificate, or increase the premium for a group, based on the manifestation of a disease or disorder of an insured or applicant.
- Increase the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who was covered under the policy.

The manifestation of a disease or disorder in one individual, however, could not be used as genetic information about other group members and to increase the group's premium further.

"Insurer of a Medicare supplement policy or certificate" would include a third-party administrator or other person acting for or on behalf of that insurer.

"Genetic information" would mean, with respect to any individual, information about his or her genetic tests, the genetic tests of his or her family members, and the manifestation of a disease or disorder in his or her family members. Genetic information would include any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by the individual or any family member of the individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman would include genetic information of any fetus carried by her or, with respect to an individual or family member using reproductive technology, genetic information of any embryo legally held by an individual or family member. Genetic information would not include information about the gender or age of any individual. "Family member" would mean any other individual who is a first-, second-, third-, or fourth-degree relative of the individual.

"Genetic services" would mean a genetic test; genetic counseling, including obtaining, interpreting, or assessing genetic information; or genetic education.

"Genetic test" would mean an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. Genetic test would 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.

### Genetic Testing

The bill would prohibit an insurer of a Medicare supplement policy or certificate from requesting or requiring an individual, or a family member of that individual, to undergo a genetic test. This would not preclude an insurer from obtaining and using the results of a genetic test in making a determination regarding payment, as defined for the purposes of applying Federal regulations promulgated under Part C of Title XI and Section 264 of the Health Insurance Portability and Accountability Act (HIPAA). An insurer could request only the minimum amount of information necessary to accomplish this purpose.

(The Federal provisions establish standards for the disclosure of individual health information, and penalties for the wrongful disclosure of that information, but exclude from those standards an entity engaged in activities of a financial institution or engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for a financial institution with respect to those activities, including the use or disclosure of information for those activities related to health plan premiums or health care.)

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

- The request was made pursuant to research that complied with 45 CFR Part 46 (Federal regulations that deal with the protection of human subjects in research), and any applicable State or local law or regulations for the protection of human subjects in research.

- The insurer clearly indicated to each individual to whom a request was made, or to the legal guardian of a minor child, that compliance with the request was voluntary and that noncompliance would have no effect on enrollment status or premium or contribution amounts.
- Collected or acquired genetic information was not 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.
- The insurer gave the Commissioner of Financial and Insurance Regulation written notice that it was conducting activities pursuant to this exception, including a description of the activities conducted.
- The insurer complied with any other conditions the Commissioner required by regulation for activities conducted under this exception.

#### Use of Genetic Info for Underwriting

The bill would prohibit an insurer of a Medicare supplement policy or certificate from requesting, requiring, or purchasing genetic information for underwriting purposes. "Underwriting purposes" would mean all of the following:

- Rules for or determination of eligibility, including enrollment and continued eligibility, for benefits under the policy.
- The computation of premium or contribution amounts under the policy.
- The application of any preexisting condition exclusion under the policy.
- Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

A Medigap insurer also could not request, require, or purchase genetic information with respect to any individual before that individual's enrollment under the policy in connection with that enrollment. If an insurer obtained genetic information incidental to requesting, requiring, or purchasing other information concerning any individual, that request, requirement, or purchase would not violate this prohibition if the information were not requested, required, or purchased for underwriting purposes.

Proposed MCL 500.3829a

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

Because Medicare is a federally funded program, the bill would have no fiscal impact on State or local government.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.