

SENATE BILL No. 744

August 19, 2009, Introduced by Senator SANBORN and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding section 3829a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 3829A. (1) THIS SECTION APPLIES TO ALL MEDICARE**
2 **SUPPLEMENT POLICIES OR CERTIFICATES DELIVERED, ISSUED FOR DELIVERY,**
3 **OR RENEWED ON OR AFTER MAY 21, 2009.**

4 **(2) AN INSURER OF A MEDICARE SUPPLEMENT POLICY OR CERTIFICATE**
5 **SHALL NOT DO EITHER OF THE FOLLOWING:**

6 **(A) DENY OR CONDITION THE ISSUANCE OR EFFECTIVENESS OF THE**
7 **POLICY OR CERTIFICATE, INCLUDING THE IMPOSITION OF ANY EXCLUSION OF**
8 **BENEFITS UNDER THE POLICY BASED ON A PREEXISTING CONDITION, ON THE**
9 **BASIS OF THE GENETIC INFORMATION WITH RESPECT TO THAT INDIVIDUAL.**

10 **(B) DISCRIMINATE IN THE PRICING OF THE POLICY OR CERTIFICATE,**

1 INCLUDING THE ADJUSTMENT OF PREMIUM RATES, OF AN INDIVIDUAL ON THE
2 BASIS OF THE GENETIC INFORMATION WITH RESPECT TO THAT INDIVIDUAL.

3 (3) NOTHING IN SUBSECTION (2) LIMITS THE ABILITY OF AN
4 INSURER, TO THE EXTENT OTHERWISE PERMITTED BY LAW, FROM DOING
5 EITHER OF THE FOLLOWING:

6 (A) DENYING OR CONDITIONING THE ISSUANCE OR EFFECTIVENESS OF A
7 POLICY OR CERTIFICATE OR INCREASING THE PREMIUM FOR A GROUP BASED
8 ON THE MANIFESTATION OF A DISEASE OR DISORDER OF AN INSURED OR
9 APPLICANT.

10 (B) INCREASING THE PREMIUM FOR ANY POLICY ISSUED TO AN
11 INDIVIDUAL BASED ON THE MANIFESTATION OF A DISEASE OR DISORDER OF
12 AN INDIVIDUAL WHO IS COVERED UNDER THE POLICY. HOWEVER, THE
13 MANIFESTATION OF A DISEASE OR DISORDER IN 1 INDIVIDUAL CANNOT BE
14 USED AS GENETIC INFORMATION ABOUT OTHER GROUP MEMBERS AND TO
15 FURTHER INCREASE THE PREMIUM FOR THE GROUP.

16 (4) AN INSURER OF A MEDICARE SUPPLEMENT POLICY OR CERTIFICATE
17 SHALL NOT REQUEST OR REQUIRE AN INDIVIDUAL OR A FAMILY MEMBER OF
18 THAT INDIVIDUAL TO UNDERGO A GENETIC TEST.

19 (5) SUBSECTION (4) DOES NOT PRECLUDE AN INSURER OF A MEDICARE
20 SUPPLEMENT POLICY OR CERTIFICATE FROM OBTAINING AND USING THE
21 RESULTS OF A GENETIC TEST IN MAKING A DETERMINATION REGARDING
22 PAYMENT, AS DEFINED FOR THE PURPOSES OF APPLYING THE REGULATIONS
23 PROMULGATED UNDER PART C OF TITLE XI AND SECTION 264 OF THE HEALTH
24 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, 42 USC 1320D
25 TO 1320D-8, AND CONSISTENT WITH SUBSECTION (2).

26 (6) FOR PURPOSES OF CARRYING OUT SUBSECTION (5), AN INSURER OF
27 A MEDICARE SUPPLEMENT POLICY OR CERTIFICATE MAY REQUEST ONLY THE

1 MINIMUM AMOUNT OF INFORMATION NECESSARY TO ACCOMPLISH THE INTENDED
2 PURPOSE.

3 (7) NOTWITHSTANDING SUBSECTION (4), AN INSURER OF A MEDICARE
4 SUPPLEMENT POLICY MAY REQUEST, BUT NOT REQUIRE, THAT AN INDIVIDUAL,
5 OR A FAMILY MEMBER OF THAT INDIVIDUAL, UNDERGO A GENETIC TEST IF
6 EACH OF THE FOLLOWING CONDITIONS IS MET:

7 (A) THE REQUEST IS MADE PURSUANT TO RESEARCH THAT COMPLIES
8 WITH 45 CFR PART 46, OR EQUIVALENT FEDERAL REGULATIONS, AND ANY
9 APPLICABLE STATE OR LOCAL LAW OR REGULATIONS FOR THE PROTECTION OF
10 HUMAN SUBJECTS IN RESEARCH.

11 (B) THE INSURER CLEARLY INDICATES TO EACH INDIVIDUAL, OR IN
12 THE CASE OF A MINOR CHILD, TO THE LEGAL GUARDIAN OF THAT CHILD, TO
13 WHOM THE REQUEST IS MADE, THAT COMPLIANCE WITH THE REQUEST IS
14 VOLUNTARY AND THAT NONCOMPLIANCE WILL HAVE NO EFFECT ON ENROLLMENT
15 STATUS OR PREMIUM OR CONTRIBUTION AMOUNTS.

16 (C) GENETIC INFORMATION COLLECTED OR ACQUIRED UNDER THIS
17 SUBSECTION SHALL NOT BE USED FOR UNDERWRITING, DETERMINATION OF
18 ELIGIBILITY TO ENROLL OR MAINTAIN ENROLLMENT STATUS, PREMIUM RATES,
19 OR THE ISSUANCE, RENEWAL, OR REPLACEMENT OF A POLICY OR
20 CERTIFICATE.

21 (D) THE INSURER NOTIFIES THE COMMISSIONER IN WRITING THAT THE
22 INSURER IS CONDUCTING ACTIVITIES PURSUANT TO THE EXCEPTION PROVIDED
23 FOR UNDER THIS SUBSECTION, INCLUDING A DESCRIPTION OF THE
24 ACTIVITIES CONDUCTED.

25 (E) THE INSURER COMPLIES WITH ANY OTHER CONDITIONS AS THE
26 COMMISSIONER MAY BY REGULATION REQUIRE FOR ACTIVITIES CONDUCTED
27 UNDER THIS SUBSECTION.

1 (8) AN INSURER OF A MEDICARE SUPPLEMENT POLICY OR CERTIFICATE
2 SHALL NOT REQUEST, REQUIRE, OR PURCHASE GENETIC INFORMATION FOR
3 UNDERWRITING PURPOSES.

4 (9) AN INSURER OF A MEDICARE SUPPLEMENT POLICY OR CERTIFICATE
5 SHALL NOT REQUEST, REQUIRE, OR PURCHASE GENETIC INFORMATION WITH
6 RESPECT TO ANY INDIVIDUAL PRIOR TO THAT INDIVIDUAL'S ENROLLMENT
7 UNDER THE POLICY IN CONNECTION WITH THAT ENROLLMENT.

8 (10) IF AN INSURER OF A MEDICARE SUPPLEMENT POLICY OR
9 CERTIFICATE OBTAINS GENETIC INFORMATION INCIDENTAL TO THE
10 REQUESTING, REQUIRING, OR PURCHASING OF OTHER INFORMATION
11 CONCERNING ANY INDIVIDUAL, THAT REQUEST, REQUIREMENT, OR PURCHASE
12 IS NOT A VIOLATION OF SUBSECTION (9) IF THAT REQUEST, REQUIREMENT,
13 OR PURCHASE DOES NOT VIOLATE SUBSECTION (8).

14 (11) AS USED IN THIS SECTION:

15 (A) "FAMILY MEMBER" MEANS, WITH RESPECT TO AN INDIVIDUAL, ANY
16 OTHER INDIVIDUAL WHO IS A FIRST-DEGREE, SECOND-DEGREE, THIRD-
17 DEGREE, OR FOURTH-DEGREE RELATIVE OF THAT INDIVIDUAL.

18 (B) "GENETIC INFORMATION" MEANS, WITH RESPECT TO ANY
19 INDIVIDUAL, INFORMATION ABOUT THAT INDIVIDUAL'S GENETIC TESTS, THE
20 GENETIC TESTS OF FAMILY MEMBERS OF THAT INDIVIDUAL, AND THE
21 MANIFESTATION OF A DISEASE OR DISORDER IN FAMILY MEMBERS OF THAT
22 INDIVIDUAL. GENETIC INFORMATION INCLUDES, WITH RESPECT TO ANY
23 INDIVIDUAL, ANY REQUEST FOR, OR RECEIPT OF, GENETIC SERVICES, OR
24 PARTICIPATION IN CLINICAL RESEARCH WHICH INCLUDES GENETIC SERVICES,
25 BY THAT INDIVIDUAL OR ANY FAMILY MEMBER OF THAT INDIVIDUAL. ANY
26 REFERENCE TO GENETIC INFORMATION CONCERNING AN INDIVIDUAL OR FAMILY
27 MEMBER OF AN INDIVIDUAL WHO IS A PREGNANT WOMAN INCLUDES GENETIC

1 INFORMATION OF ANY FETUS CARRIED BY THAT PREGNANT WOMAN OR, WITH
2 RESPECT TO AN INDIVIDUAL OR FAMILY MEMBER UTILIZING REPRODUCTIVE
3 TECHNOLOGY, INCLUDES GENETIC INFORMATION OF ANY EMBRYO LEGALLY HELD
4 BY AN INDIVIDUAL OR FAMILY MEMBER. GENETIC INFORMATION DOES NOT
5 INCLUDE INFORMATION ABOUT THE SEX OR AGE OF ANY INDIVIDUAL.

6 (C) "GENETIC SERVICES" MEANS A GENETIC TEST, GENETIC
7 COUNSELING, INCLUDING OBTAINING, INTERPRETING, OR ASSESSING GENETIC
8 INFORMATION, OR GENETIC EDUCATION.

9 (D) "GENETIC TEST" MEANS AN ANALYSIS OF HUMAN DNA, RNA,
10 CHROMOSOMES, PROTEINS, OR METABOLITES, THAT DETECT GENOTYPES,
11 MUTATIONS, OR CHROMOSOMAL CHANGES. GENETIC TEST DOES NOT MEAN AN
12 ANALYSIS OF PROTEINS OR METABOLITES THAT DOES NOT DETECT GENOTYPES,
13 MUTATIONS, OR CHROMOSOMAL CHANGES; OR AN ANALYSIS OF PROTEINS OR
14 METABOLITES THAT IS DIRECTLY RELATED TO A MANIFESTED DISEASE,
15 DISORDER, OR PATHOLOGICAL CONDITION THAT COULD REASONABLY BE
16 DETECTED BY A HEALTH CARE PROFESSIONAL WITH APPROPRIATE TRAINING
17 AND EXPERTISE IN THE FIELD OF MEDICINE INVOLVED.

18 (E) "INSURER OF A MEDICARE SUPPLEMENT POLICY OR CERTIFICATE"
19 INCLUDES A THIRD-PARTY ADMINISTRATOR OR OTHER PERSON ACTING FOR OR
20 ON BEHALF OF THAT INSURER.

21 (F) "UNDERWRITING PURPOSES" MEANS ALL OF THE FOLLOWING:

22 (i) RULES FOR, OR DETERMINATION OF, ELIGIBILITY, INCLUDING
23 ENROLLMENT AND CONTINUED ELIGIBILITY, FOR BENEFITS UNDER THE
24 POLICY.

25 (ii) THE COMPUTATION OF PREMIUM OR CONTRIBUTION AMOUNTS UNDER
26 THE POLICY.

27 (iii) THE APPLICATION OF ANY PREEXISTING CONDITION EXCLUSION

1 UNDER THE POLICY.

2 (iv) OTHER ACTIVITIES RELATED TO THE CREATION, RENEWAL, OR

3 REPLACEMENT OF A CONTRACT OF HEALTH INSURANCE OR HEALTH BENEFITS.