

§2159-C. Discrimination on the basis of genetic information or testing

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Genetic characteristic" means any inherited gene or chromosome, or alteration of a gene or chromosome, that is scientifically or medically believed to predispose an individual to a disease, disorder or syndrome or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome. [PL 1997, c. 677, §2 (NEW).]

B. "Genetic information" means the information concerning genes, gene products or inherited characteristics that may be obtained from an individual or family member. [PL 1997, c. 677, §2 (NEW).]

C. "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids, such as deoxyribonucleic acid, or DNA, ribonucleic acid, or RNA, or mitochondrial DNA, and tests of chromosomes or proteins in order to identify a predisposing genetic characteristic. [PL 1997, c. 677, §2 (NEW).]

D. "Carrier" means an insurer, nonprofit hospital and medical service organization or health maintenance organization. [PL 2009, c. 244, Pt. D, §1 (NEW).]
[PL 2009, c. 244, Pt. D, §1 (AMD).]

2. Discrimination in health, hospital and dental insurance. A carrier that issues individual or group hospital, health or dental insurance is subject to the requirements of this subsection. This subsection does not apply to accidental injury, specified disease, hospital indemnity, disability, long-term care and other limited benefit health insurance policies and contracts.

A. A carrier may not discriminate against an individual or eligible dependent on the basis of genetic information or the refusal to submit to a genetic test or make available the results of a genetic test or on the basis that the individual or eligible dependent received a genetic test or genetic counseling in the issuance, withholding, extension or renewal of any hospital confinement or other health insurance, as defined by the superintendent, by rule, or in the fixing of the rates, terms or conditions for insurance, or in the issuance or acceptance of any application for insurance. [PL 2009, c. 244, Pt. D, §2 (NEW).]

B. Except as provided in this paragraph, a carrier may not request or require an individual to undergo a genetic test.

(1) Nothing in this subsection limits the authority of a health care professional who is providing health care services to an individual to request that that individual undergo a genetic test.

(2) A carrier may request, but not require, that an individual undergo a genetic test if the conditions described in this subparagraph are met:

(a) The request is made pursuant to research that complies with 45 Code of Federal Regulations, Part 46 or equivalent federal regulations and any applicable state or local laws, rules or regulations for the protection of human subjects in research;

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

(c) Genetic information collected or acquired under this subparagraph is not used for purposes of determining eligibility for benefits, computing premium or contribution amounts, applying any preexisting condition exclusion or any other activities related to the creation, renewal or replacement of a health insurance contract; and

(d) The carrier complies with all applicable federal laws and regulations. [PL 2009, c. 244, Pt. D, §2 (NEW).]

C. A carrier may not request, require or purchase genetic information for purposes of determining eligibility for benefits, computing premium or contribution amounts, applying any preexisting condition exclusion or any other activities related to the creation, renewal or replacement of a health insurance contract. [PL 2009, c. 244, Pt. D, §2 (NEW).]

D. A carrier may not request, require or purchase genetic information with respect to an individual prior to the individual's enrollment under the plan or coverage in connection with the enrollment. [PL 2009, c. 244, Pt. D, §2 (NEW).]

E. If a carrier obtains genetic information incidental to the requesting, requiring or purchasing of other information concerning an individual, the request, requirement or purchase is not considered a violation of paragraph D if the request, requirement or purchase is not in violation of paragraph C. [PL 2009, c. 244, Pt. D, §2 (NEW).]

F. A reference in this subsection to genetic information concerning an individual includes:

(1) With respect to an individual who is a pregnant woman, genetic information of any fetus carried by that individual; and

(2) With respect to an individual using an assisted reproductive technology, genetic information of any embryo legally held by the individual. [PL 2009, c. 244, Pt. D, §2 (NEW).]

[PL 2009, c. 244, Pt. D, §2 (RPR).]

3. Discrimination in life, disability and long-term care insurance. An insurer may not make or permit any unfair discrimination against an individual in the application of genetic information or the results of a genetic test in the issuance, withholding, extension or renewal of an insurance policy for life, credit life, disability, long-term care, accidental injury, specified disease, hospital indemnity or credit accident insurance or an annuity. For the purposes of this subsection, "unfair discrimination" includes, but is not limited to, the application of the results of a genetic test in a manner that is not reasonably related to anticipated claims experience.

A. If the superintendent has reason to believe that unfair discrimination has occurred and that a proceeding by the superintendent is in the interest of the public, the superintendent, in accordance with chapter 3, shall serve upon the insurer a statement of the charges. Upon a determination that the practice or act of the insurer is in conflict with this subsection, the superintendent shall issue an order requiring the insurer to cease and desist from engaging in the practice or act and may order payment of a penalty consistent with the provisions of section 12-A. [PL 1997, c. 677, §2 (NEW).]

B. If, in the issuance, withholding, extension or renewal of an insurance policy covered by this subsection, an insurer uses the results of a genetic test in compliance with this subsection, the insurer shall notify the individual who is the subject of the genetic test that such a test is required and shall obtain the individual's authorization in accordance with the requirements of chapter 24. If a genetic test is required, the insurer shall ensure that the individual states in writing whether the individual wishes to be informed of the test results and, if authorized by the individual, shall provide a copy of the test results, along with a written interpretation of the results by a qualified professional, to the individual or to a physician or other health care practitioner designated by the individual. [PL 1997, c. 677, §2 (NEW).]

[PL 1997, c. 677, §2 (NEW).]

4. Use of information obtained through direct-to-consumer genetic testing. In connection with the issuance, withholding, extension or renewal of an insurance policy for life, credit life, disability, long-term care, accidental injury, specified disease, hospital indemnity or credit accident insurance or

an annuity, an insurer may not request, require, purchase or use information obtained from an entity providing direct-to-consumer genetic testing without the informed written consent of the individual who has been tested.

[PL 2019, c. 208, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 677, §2 (NEW). PL 2009, c. 244, Pt. D, §§1, 2 (AMD). PL 2019, c. 208, §1 (AMD).

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