

CHAPTER 631

(Senate Bill 918)

AN ACT concerning

Long-Term Care Insurance - ~~Discrimination Based on Genetic Information or Tests - Prohibited~~ Prohibited Acts - Genetic Tests, Genetic Information, or Genetic Services

FOR the purpose of ~~repealing an exemption for long-term care insurance policies from the scope of certain provisions of law regulating the use and disclosure of certain genetic information, certain genetic tests, and the results of certain genetic tests by certain health insurance carriers in connection with health insurance policies and contracts; and generally relating to genetic tests, genetic information, and long-term care insurance prohibiting a carrier or insurance producer of a carrier that provides long-term care insurance from requesting or requiring a genetic test or from using a genetic test, the results of a genetic test, genetic information, or a request for genetic services to take certain actions with regard to long-term care insurance; providing for a certain exception; defining certain terms; and generally relating to prohibited acts relating to genetic tests, genetic information, and genetic services with regard to long-term care insurance.~~

BY repealing and reenacting, without amendments,
Article - Insurance
Section 18-101(a) and (d)
Annotated Code of Maryland
(2006 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article - Insurance
Section ~~27-909~~ 18-120
Annotated Code of Maryland
(2006 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Insurance

18-101.

(a) In this title the following words have the meanings indicated.

(d) "Carrier" means an insurer, nonprofit health service plan, health maintenance organization, or preferred provider organization.

~~27-909.~~

~~(a) (1) In this section the following words have the meanings indicated.~~

~~(2) "Gene product" means the biochemical material, either RNA or protein, made by a gene.~~

~~(3) (i) "Genetic information" means information:~~

~~1. about chromosomes, genes, gene products, or inherited characteristics that may derive from an individual or a family member;~~

~~2. obtained for diagnostic and therapeutic purposes; and~~

~~3. obtained at a time when the individual to whom the information relates is asymptomatic for the disease.~~

~~(ii) "Genetic information" does not include:~~

~~1. routine physical measurements;~~

~~2. chemical, blood, and urine analyses that are widely accepted and in use in clinical practice;~~

~~3. tests for use of drugs; or~~

~~4. tests for the presence of the human immunodeficiency virus.~~

~~(4) "Genetic services" means health services that are provided to obtain, assess, and interpret genetic information for diagnostic and therapeutic purposes and for genetic education and counseling.~~

~~(5) "Genetic test" means a laboratory test of human chromosomes, genes, or gene products that is used to identify the presence or absence of inherited or congenital alterations in genetic material that are associated with disease or illness.~~

~~(b) This section does not apply to life insurance policies, annuity contracts, [long term care insurance policies,] or disability insurance policies.~~

~~(c) An insurer, nonprofit health service plan, or health maintenance organization may not:~~

~~(1) use a genetic test, the results of a genetic test, genetic information, or a request for genetic services, to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms or conditions of, or otherwise affect a health insurance policy or contract;~~

~~(2) request or require a genetic test, the results of a genetic test, or genetic information for the purpose of determining whether or not to issue or renew health benefits coverage; or~~

~~(3) release identifiable genetic information or the results of a genetic test to any person who is not an employee of the insurer, nonprofit health service plan, or health maintenance organization or a participating health care provider who provides medical services to insureds or enrollees without the prior written authorization of the individual from whom the test results or genetic information was obtained.~~

~~(d) Disclosure of identifiable genetic information to an employee or health care provider authorized under subsection (c)(3) of this section shall only be for the purpose of:~~

~~(1) providing medical care to patients; or~~

~~(2) conducting research that has been approved by an institutional review board established in accordance with federal law.~~

~~(e) The authorization described in subsection (c)(3) of this section is required for each disclosure and shall describe the individual or entities making the disclosure, to whom the disclosure is to be made, and the information to be disclosed.~~

~~(f) (1) For purposes of this subsection, §§ 4-113, 4-114, 27-501, and 27-505 of this article apply to nonprofit health service plans and health maintenance organizations.~~

~~(2) The Commissioner may issue an order under §§ 4-113, 4-114, 27-501, and 27-505 of this article if the Commissioner finds a violation of this section.~~

18-120.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (1) “GENETIC INFORMATION” MEANS INFORMATION DERIVED FROM A GENETIC TEST:

1. ABOUT CHROMOSOMES, GENES, GENE PRODUCTS, OR INHERITED CHARACTERISTICS THAT MAY DERIVE FROM AN INDIVIDUAL OR A FAMILY MEMBER;

2. NOT OBTAINED FOR DIAGNOSTIC AND THERAPEUTIC PURPOSES; AND

3. OBTAINED AT A TIME WHEN THE INDIVIDUAL TO WHOM THE INFORMATION RELATES IS ASYMPTOMATIC FOR THE DISEASE, DISORDER, ILLNESS, OR IMPAIRMENT TO WHICH THE INFORMATION RELATES.

(II) "GENETIC INFORMATION" DOES NOT INCLUDE INFORMATION:

1. RELATING TO A DISEASE, DISORDER, ILLNESS, OR IMPAIRMENT THAT IS OR HAS BEEN MANIFESTED OR FOR WHICH THE INDIVIDUAL IS OR HAS BEEN SYMPTOMATIC; OR

2. DERIVED FROM:

A. ROUTINE PHYSICAL MEASUREMENTS;

B. CHEMICAL, BLOOD, AND URINE ANALYSES;

C. TESTS FOR THE USE OF DRUGS;

D. TESTS FOR THE PRESENCE OF THE HUMAN IMMUNODEFICIENCY VIRUS; OR

E. TESTS FOR THE PURPOSE OF DIAGNOSING A MANIFESTED DISEASE, DISORDER, ILLNESS, OR IMPAIRMENT.

(3) "GENETIC SERVICES" MEANS HEALTH SERVICES THAT ARE PROVIDED TO OBTAIN, ASSESS, OR INTERPRET GENETIC INFORMATION OR THE RESULTS OF GENETIC TESTS.

(4) (I) "GENETIC TEST" MEANS AN ANALYSIS OF HUMAN DNA, RNA, CHROMOSOMES, PROTEINS, OR METABOLITES THAT DETECTS GENOTYPES, MUTATIONS, OR CHROMOSOMAL CHANGES.

(II) "GENETIC TEST" DOES NOT INCLUDE:

1. ROUTINE PHYSICAL MEASUREMENTS;

- 2. CHEMICAL, BLOOD, AND URINE ANALYSES;**
- 3. TESTS FOR THE USE OF DRUGS;**
- 4. TESTS FOR THE PRESENCE OF THE HUMAN IMMUNODEFICIENCY VIRUS; OR**
- 5. TESTS THAT ARE DIRECTLY RELATED TO A MANIFESTED DISEASE, DISORDER, ILLNESS, OR IMPAIRMENT THAT COULD REASONABLY BE DETECTED BY A HEALTH CARE PROFESSIONAL WITH APPROPRIATE TRAINING AND EXPERTISE IN THE FIELD OF MEDICINE INVOLVED.**

(B) In addition to the other practices prohibited under this article, a carrier or insurance producer of a carrier that provides long-term care insurance may not:

(1) employ a method of marketing that induces or tends to induce the purchase of long-term care insurance through undue pressure;

(2) use a method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance, and that contact will be made by an insurance producer or carrier; [or]

(3) knowingly make a misleading representation or an incomplete or fraudulent comparison of policies or carriers to induce a person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert a policy or take out a policy with another carrier[.];

(4) REQUEST OR REQUIRE A GENETIC TEST TO:

(I) DENY OR LIMIT THE AMOUNT, EXTENT, OR KIND OF LONG-TERM CARE INSURANCE COVERAGE AVAILABLE TO AN INDIVIDUAL; OR

(II) CHARGE A DIFFERENT RATE FOR THE SAME LONG-TERM CARE INSURANCE COVERAGE; OR

(5) USE A GENETIC TEST, THE RESULTS OF A GENETIC TEST, GENETIC INFORMATION, OR A REQUEST FOR GENETIC SERVICES TO:

(I) DENY OR LIMIT THE AMOUNT, EXTENT, OR KIND OF LONG-TERM CARE INSURANCE COVERAGE AVAILABLE TO AN INDIVIDUAL; OR

(II) CHARGE A DIFFERENT RATE FOR THE SAME LONG-TERM CARE INSURANCE.

(C) NOTWITHSTANDING SUBSECTION (B)(5) OF THIS SECTION, IF THE USE IS BASED ON SOUND ACTUARIAL PRINCIPLES, THE RESULTS OF A GENETIC TEST OR GENETIC INFORMATION MAY BE USED TO:

(1) DENY OR LIMIT THE AMOUNT, EXTENT, OR KIND OF LONG-TERM CARE INSURANCE COVERAGE MADE AVAILABLE TO AN INDIVIDUAL; OR

(2) CHARGE A DIFFERENT RATE FOR THE SAME LONG-TERM CARE INSURANCE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, May 22, 2008.