

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1351 (Delegates Manno and Montgomery)  
Health and Government Operations

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Insurance - Use of Genetic Information and Genetic Tests

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This bill authorizes an insurer or nonprofit health service plan to use existing genetic information when underwriting a disability or life insurance policy but prohibits an insurer from requiring an applicant to undergo a genetic test. For a policy or contract of disability, long-term care, or life insurance, the bill authorizes an insurer, nonprofit health service plan, or health maintenance organization (HMO) to disclose identifiable genetic information to a person who is not an employee or a health care provider for the sole purpose of providing medical care to patients or conducting research that has been approved by an institutional review board established according to federal law. The bill also defines a number of terms to be consistent with federal law.

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Fiscal Summary

**State Effect:** Enforcement of the bill can be handled with existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** To determine compliance with the bill, the Insurance Commissioner may arrange for an independent review organization to review the use of genetic information by an insurer or nonprofit health service plan at the expense of the insurer or nonprofit health service plan.

**Current Law:** Carriers may not (1) use a genetic test or information, or a request for genetic services, to reject, deny, limit, cancel, refuse to renew, increase the rates of, or affect the terms or conditions of a health insurance policy or contract; (2) request or require a genetic test or information to determine whether to issue or renew health benefits coverage; or (3) release identifiable genetic information or the results of a genetic test to anyone other than an employee of the carrier or a participating health care provider without written consent. Disclosure of identifiable genetic information to anyone other than an employee of the carrier or a participating health care provider must only be for the purpose of providing medical care to patients or conducting research that has been approved by an institutional review board established according to federal law. These prohibitions do not apply to life insurance, annuity contracts, long-term care insurance, or disability insurance.

However, Chapters 631 and 632 of 2008 prohibit carriers that provide long-term care insurance from requesting or requiring a genetic test or using specified genetic information to (1) deny or limit long-term care insurance coverage; or (2) charge a different rate for the same long-term care insurance coverage unless use of the test results or information is based on sound actuarial principles.

**Background:** While all types of health and life insurance may be purchased on a group or an individual basis, most Americans receive health benefits through their employer as part of their compensation. However, disability, long-term care, and life insurance are more discretionary purchases, increasing the risk of information asymmetry and adverse selection.

Scientific advances in genetic testing raise new implications for the potential use and misuse of genetic information in insurance underwriting. Federal law prohibits discrimination based on genetic information for purposes of health insurance. The Health Insurance Portability and Accountability Act of 1996 prohibits employers from excluding or rating otherwise eligible employees from group health plans based on genetic information. The Genetic Information Nondiscrimination Act of 2008 prohibits health insurers from using a person's genetic information in determining eligibility or premiums or requesting or requiring that the person undergo a genetic test. Neither Act applies to life, disability, or long-term care insurance.

HB 1 and SB 2 of 2009 would have prohibited insurers, nonprofit health service plans, and HMOs (carriers) from using a genetic test or genetic information for specified purposes relating to disability insurance. In addition, three other bills pertaining to genetic information and genetic testing in insurance and personalized medicine were considered during the 2009 legislative session. Although the bills failed to become law, the House Health and Government Operations Committee and the Senate Finance Committee asked the Maryland Insurance Administration (MIA) to convene a workgroup

on genetic testing to explore the use of genetic information and genetic testing in disability and life insurance as well as personalized medicine. The workgroup met over the course of the 2009 interim and submitted its final report in December 2009.

Although the workgroup did not reach a consensus on recommendations, MIA recommended that the General Assembly amend statute to permit insurers to use genetic information when underwriting disability and life insurance but prohibit insurers from requiring an applicant to undergo a genetic test. MIA advises that this would make the standards for the use of genetic information and genetic tests uniform for disability, long-term care and life insurance but recognizes that this standard should not be the same as the national standard for health benefits because of the more voluntary, and discretionary characteristics of the purchase of disability, long-term care, and life insurance.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** CareFirst Blue Cross/Blue Shield, Department of Budget and Management, Maryland Health Insurance Plan, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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Analysis by: Sarah K. Volker

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510