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Date: January 31, 2024

Bill # / Title: Senate Bill 142 – Genetic Testing - Prohibitions on Disability, Life, and Long-Term Care Insurance (Genetic Testing Protection Act of 2024)

Committee: Senate Finance Committee

Position: Letter of Information (LOI)

The Maryland Insurance Administration (MIA) appreciates the opportunity to provide the Committee with information regarding Senate Bill 142.

If enacted, Senate Bill 142 will place certain prohibitions on the use of genetic information and genetic testing by carriers offering life insurance, long-term care (LTC) insurance, and disability insurance. Specifically, under a new § 27-909.1 of the Insurance Article,¹ carriers issuing these products would not be permitted to: 1) deny or limit coverage based solely on whether an applicant or policyholder has undergone genetic testing; 2) prohibit a policyholder from undergoing genetic testing; or 3) use a genetic test, the results of a genetic test, genetic information, or a request for genetic services to affect a life insurance, LTC insurance or disability insurance policy in any way, including rejecting, denying, limiting, cancelling, refusing to renew, or increasing the rates.

Section 27-909 currently imposes many of the same prohibitions on insurers, non-profit health service plans, and HMOs, but expressly exempts life insurance, LTC insurance, and disability insurance from those prohibitions. In 2009, the Maryland General Assembly asked the MIA to convene a Workgroup on Genetic Testing to explore the use of genetic information and genetic testing in disability insurance and life insurance. The MIA issued a report in December, 2009 to summarize the findings and recommendations of the Workgroup. Although some of the information in the report is outdated due to recent advancements in medicine and genetic research, many of the issues examined by the Workgroup remain relevant to the discussion of Senate Bill 142, including providing the background and rationale for why § 27-909 of the Insurance Article currently exempts life insurance, LTC insurance, and disability insurance from the prohibitions on the use of genetic testing and genetic information. A copy of the complete report is attached to this letter of information.

¹ All statutory references herein are to the Insurance Article, Maryland Annotated Code.

As the Committee considers SB 142, for context, the MIA notes that there are important differences between the three types of insurance impacted by Senate Bill 142 and the products (primarily health insurance products) that are currently subject to the prohibitions under § 27-909 of the Insurance Article. Life insurance, LTC insurance, and disability insurance are products intended to be of long duration that remain in force with guaranteed renewals as long as premium is paid. For these types of insurance, insurers have only one opportunity to evaluate and price a risk that is being insured for decades to come because, *once issued, premium cannot be adjusted based on changes in the health or risk profile of the individual insured.*²

Given that, for these three types of long-duration insurance products, the applicant's health status, as well as their individual and family health history, are not only permissible considerations during underwriting, but are often critical considerations in deciding whether to insure the applicant and, if so, what to charge for that insurance.³ From the standpoint of fiscal responsibility and solvency, it is imperative that carriers price these products correctly at the outset to assure that the amount of premium collected over the life of the policy (and all policies in the aggregate) will be sufficient to cover the claims that are typically made decades after the policies were issued. That requires carriers to consider life expectancy, longevity and an individual's mortality or morbidity risk based on relevant predictive information – which includes information about the individual's health status, health history, family history and, where it exists, genetic information and genetic testing results.

In the current Maryland market, to the MIA's knowledge, no authorized carrier requires or requests applicants to undergo genetic testing as part of the underwriting process. However, where medical underwriting occurs, to the extent results for genetic testing exist in the medical record, carriers writing in the Maryland market do consider this information if it is relevant to their underwriting standards. Doing so actually allows insurers to be more precise and inclusive in underwriting. For conditions with a genetic component, the results of genetic testing may improve an applicant's risk profile. For example, for certain conditions, there may be only a small number of cases where the condition is inherited, while the majority of cases develop without a genetic cause. If such a condition is part of the applicant's family history, a genetic test result showing the absence of gene is a favorable underwriting consideration that helps the consumer in the underwriting process. Consequently, while the MIA appreciates that one of the goals of Senate Bill 142 appears to be to protect individuals with genetic conditions from adverse underwriting decisions, the MIA is concerned that prohibiting insurers from considering the results of genetic tests is more likely to be detrimental to individuals, particularly those who may have a family history of diseases that have both genetic and non-genetic risk factors. Additionally, since life, LTC, and disability insurers would still be permitted to underwrite individuals based on information in the medical record that does not

² For these products, changes in rates can only be made with respect to an entire class based on the underwriting and loss performance of that entire class. This excludes individual life insurance contracts where premiums cannot exceed the maximum in the policy. Typically, the premiums charged at issue may start out lower than increase up to the maximum rates in later years. Accurate underwriting and pricing of individuals according to accurate loss assumptions helps avoid class based rate changes.

³ Not all policies in these lines of business are medically underwritten. For example, group life insurance products offered through employers and in place during the term of employment typically do not require medical underwriting for certain levels of coverage.

have a genetic component, Senate Bill 142 could be viewed as discriminating against those who have diseases that lack a genetic cause.

The MIA also notes that if life insurers, LTC insurers, and disability insurers can no longer consider genetic information or testing results, insurers will likely respond by raising premium rates overall, and by making underwriting standards more stringent for health conditions that lack a genetic cause. Genetic information and testing results, where available, allow insurers that issue long-duration policies where the risk is priced based on long term predictions of life and health status to be more precise in their underwriting and pricing. Insurers have expressed concern about the impact of being unable to identify or price coverage for someone who receives genetic test results and, based on concerns about those results, applies for coverage. Where genetic information and test results already exist within the medical records, prohibiting an insurer from utilizing that data when it is directly relevant to underwriting criteria makes loss predictions less accurate both with respect to the individual being underwritten and, ultimately, with respect to the class as a whole; while carriers cannot change an individual's premium after issuance of these kind of policies, if losses for the class of individuals is higher than projected, the rates can be changed for the class, leading to premium increases for all individuals. Ultimately, removing the current ability of carriers that issue these products blunts the instruments used to underwrite and price equitably and is likely to result in more declinations and higher pricing as a substitute for more precise loss assessment.

At present, the MIA is not able to assist the Committee to quantify the potential impact on rates, because, to the MIA's knowledge, only one state, Florida, has passed legislation that imposes similar (but not quite as broad) prohibitions as those contained in Senate Bill 142 on the life, LTC and disability market. That legislation, which was enacted in 2020, is too new to assess. We note, however, that legislation in Florida is pending that would narrow the prohibitions and allow for consideration of existing genetic information and test results in an applicant's medical records.

From a technical perspective, the MIA notes that the bill conflicts with the terms of § 18-120 of the Insurance Article. Section 18-120 includes certain prohibitions related to genetic tests and genetic information for LTC insurance that are not wholly consistent with new § 27-909.1, but, importantly, permits the use of genetic tests by carriers of LTC insurance to deny or limit coverage, or change the rate for insurance so long as "the use is based on sound actuarial principles." An amendment would be necessary to either § 18-120 or § 27-909.1 to resolve this conflict.

Additionally, while the bill defines the terms "genetic test," "genetic services," and "genetic information," there are minor discrepancies between the definitions for these terms in new § 27-909.1, and the corresponding definitions for these terms in existing §§ 18-120 and 27-909. . The inconsistencies between the definitions could contribute to a somewhat confusing regulatory scheme, since the same terms would encompass slightly different types of tests, services, and information, depending on the insurance product.

Finally, while Section 2 of the bill indicates that the Act takes effect on October 1, 2024, the bill is missing the standard applicability effective date clause, which would indicate that the bill applies to policies and contracts issued, delivered, or renewed in the State on or after a specified date.

Thank you for the opportunity to provide this letter of information. The MIA is available to provide additional information and assistance to the Committee.