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Date: February 26, 2025

Bill # / Title: Senate Bill 757 - Genetic Testing - Health Insurance - Preventive Services - Enforcement Authority

Committee: Senate Finance Committee

Position: Letter of Information

The Maryland Insurance Administration (MIA) appreciates the opportunity to provide information regarding Senate Bill 757.

If enacted, Senate Bill 757 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. 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.

In 2009, the MIA convened a workgroup on genetic testing in life and disability income (DI) insurance which recommended that the General Assembly amend Maryland statutes to permit insurers to use genetic information when underwriting life and DI insurance, but prohibit insurers from requiring an applicant to undergo a genetic test. To date, the statutes concerning this have not been amended.

Senate Bill 757 is different from previous introductions of similar legislation in that it strikes “inherited characteristics” from the definition of “genetic information,” and clarifies the definition does not include family medical history. The bill adds that carriers may consider an enrollee’s medical diagnosis even if it is based on a genetic test.

The MIA understands that there are concerns from the insurance industry about the impact of this legislation on the pricing and fairness in rating for these products that could result should this legislation pass.

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.

Another technical issue is that there are different definitions of the terms “genetic information,” “genetic services,” and “genetic test” in three different state laws that all address genetic information. 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. Consistency in definitions across all three statutes would be preferable.

In addition, a minor issue arises from the confusion the proposed bill language creates as to the limitation of the carriers to whom the bill applies. The bill includes a definition of “insurance carriers” and then indicates that it “applies only to life insurance, long-term care insurance, and disability insurance policies or contracts” and prohibits certain actions by “insurance carriers that offer, issue, or deliver a life insurance, long-term care insurance, or disability insurance policy.” A more logical way to limit the scope of the bill is to simply indicate that the term “carrier” means an insurance carrier that offers, issues, or delivers a life insurance, long-term care insurance, or disability insurance policy.

Finally, while Section 2 of the bill indicates that the Act takes effect on October 1, 2025, 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.