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Bulletin No. 00-16

To: Commercial Insurers Offering Life, Health, Disability or Long-Term Care Products Blue Cross and Blue Shield of Massachusetts (BCBSMA) and Health Maintenance Organizations (HMOs)

From: Linda Ruthardt, Commissioner of Insurance

Re: Certain New Requirements Regarding Genetic Testing and Privacy Protection

Date: October 23, 2000

This bulletin is to inform carriers of certain provisions relative to genetic testing and privacy protection that are contained in Chapter 254 of the Acts of 2000 (Chapter 254), which will take effect on November 20, 2000. Chapter 254 prohibits the following: the disclosure of genetic tests without the consent of the person to whom the information pertains, the use of such genetic tests as a condition of employment or insurance and discrimination by insurance carriers based on the results of genetic tests.

Accident and Sickness Insurance, Other than Disability Income and Long-Term Care Insurance

Chapter 254 adds the following sections to the health insurance statutes: M.G.L. c. 175, § 108H; M.G.L. c. 176A, § 3B; M.G.L. c. 176B, § 5B; M.G.L. c. 176G, § 24; and M.G.L. c. 176I, § 4A. These new sections prohibit commercial insurance companies, BCBSMA and HMOs from canceling, refusing to issue or renew, or in any other way making or permitting any distinction or discrimination based on genetic information, as defined in those sections in the amount of payment of premium or rates charged, in the length of coverage, or in any other of the terms and conditions of any accident and sickness insurance other than disability income and long-term care insurance. In addition, neither carriers, nor any officers, agents or brokers, may require genetic tests or genetic information as defined in those sections as a condition of the issuance or renewal of any such coverage.

Disability Income and Long-Term Care Insurance

Chapter 254 also adds M.G.L. c. 175, § 108I affecting the offer of disability income and long-term care insurance. This new section prohibits commercial insurance carriers, when offering disability income or long-term care insurance, from canceling, refusing to issue or renew, charging any increased rate, restricting any length of coverage or in any way practicing discrimination against persons based on genetic information unless such action is taken pursuant to reliable information relating to the insured's mortality or morbidity, based on sound actuarial principles or actual or reasonably anticipated claim experience.

Although carriers may not require an applicant to undergo a genetic test as a condition of the issuance or renewal of such policies, carriers offering disability income or long-term care insurance, as well as their officers, agents or brokers, may ask on an application for coverage whether or not the applicant has taken a genetic test, as defined in these sections, but they cannot require the applicant to answer such questions. Any application with such a question must inform the applicant that he or she is not required to answer this question, but that failure to answer the question may result in an increased rate or denial of coverage. If the applicant chooses to submit genetic information, the insurer is authorized to use that information to set the terms of a policy provided that the genetic information is reliable information relating to the insured's mortality or morbidity, based on sound actuarial principles, or actual or reasonably anticipated experience.

If the commissioner believes that any carrier is practicing unfair discrimination in the use of genetic tests, the commissioner may proceed with investigations under the provisions of M.G.L. c. 176D and conduct a hearing regarding any carrier's use of genetic tests in the issuance of disability income or long-term care insurance policies.

Life Insurance

Chapter 254 also adds M.G.L. c. 175, §120E affecting the offer of life insurance. This new section prohibits commercial insurance carriers, when offering life insurance, from canceling, refusing to issue or renew, charging any increased rate, restricting any length of coverage or in any way practicing discrimination against persons based on genetic information unless such action is taken pursuant to reliable information relating to the insured's mortality or morbidity, based on sound actuarial principles or actual or reasonably anticipated claim experience.

Although carriers may not require an applicant to undergo a genetic test as a condition of the issuance or renewal of such policies, carriers offering life insurance, as well as their officers, agents or brokers, may ask on an application for coverage whether or not the applicant has taken a genetic test, as defined in these sections, but they cannot require the applicant to answer such questions. Any application with such a question must inform the applicant that he or she is not required to answer this question, but that failure to answer the question may result in an increased rate or denial of coverage. If the applicant chooses to submit genetic information, the insurer is authorized to use that information to set the terms of a policy provided that the genetic information is reliable information relating to the insured's mortality or morbidity, based on sound actuarial principles, or actual or reasonably anticipated experience.

If the commissioner believes that any carrier is practicing unfair discrimination in the use of genetic tests, the commissioner may proceed with investigations under the provisions of M.G.L. c. 176D and conduct a hearing regarding any carrier's use of genetic tests in the issuance of life insurance policies.

Carriers are advised to examine the full text of Chapter 254 for a complete review of its provisions. Questions about this bulletin should be directed to the State Rating Bureau, Division of Insurance, (617) 521-7349, or faxed to (617) 521-7773.