

State of Idaho
DEPARTMENT OF INSURANCE

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WILLIAM W. DEAL
Director

BULLETIN NO. 09-10

DATE: September 29, 2009

TO: Disability/Health Carriers and Producers

FROM: William W. Deal, Director

SUBJECT: Genetic Information Nondiscrimination Act (Public Law 110-233, effective May 21, 2008) and Idaho Code § 41-1313, "Unfair Discrimination"

The Genetic Information Nondiscrimination Act (GINA) is a federal law that prohibits discrimination in health insurance (and employment) on the basis of genetic information. "Genetic information" means information about:

- An individual's genetic tests;
- The genetic tests of the individual's family members; and
- The manifestation of a disease or disorder in a family member, including a fetus or embryo.

Under GINA, "health insurance" means plans as defined by the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) that are not "excepted benefits." GINA does not apply to life insurance, disability income insurance or long-term care insurance.

GINA applies to:

- Group health plans, for plan years beginning after May 21, 2009.
- Individual health plans, for other than Medicare-related plans, as of May 21, 2009.
- Medicare-related plans, as of July 1, 2009, unless a state adopts the new Medicare-related model regulation for GINA prior to that date.

(As of November 21, 2009, for employers with 15 or more employees, GINA also prohibits discrimination in workplace employment based on genetic information.)

Health plans subject to GINA may not request, require or purchase genetic information for underwriting purposes, and may not collect such information about an individual before the individual is enrolled or covered under the plan. Health insurance plans may not adjust premiums or contribution amounts based on genetic information, but may adjust premiums based on the manifestation of a disease or disorder in an individual enrolled in the plan.

The plan may not discriminate against any family member due to:

- One family member's manifestation of a disease or disorder;
- Genetic information of any fetus carried by a pregnant family member; or
- For a family member using "assisted reproductive technology," genetic information of any embryo legally held by a family member.

Individual plans may not impose a pre-existing condition limitation based on genetic information. (This law is already in effect under HIPAA for employment-related group plans.)

Idaho Code Section 41-1313(3) currently prohibits discrimination on the basis of genetic testing in the issuance of coverage, or fixing of rates, terms or conditions in any policy or contract of disability or health insurance, including, but not limited to, disability income, health benefit plans, supplemental insurance, and long-term care insurance. Please note this Idaho Insurance Code section applies to discrimination based on genetic testing only, but applies to a greater variety of insurance products than GINA.

For Medicare-related insurance, the "Medicare Improvements for Patients and Providers Act of 2008" ("MIPPA", Public Law 110-275) revised the minimum standards for Medicare Supplement/Medigap plans and included updates for GINA. The Department adopted temporary rule IDAPA 18.01.54. (Rule 54), "Rule to Implement the NAIC Medicare Supplemental Insurance Minimum Standards Model Act," as of July 1, 2009 to include the new required plan standards.

Forms submitted to the Department's Rates and Forms Section will be reviewed for compliance with federal and state laws regarding genetic information and genetic testing.

Any questions regarding this bulletin may be directed to Joan Krosch, Health Policy Specialist, (208) 334-4300, or by email to: joan.krosch@doi.idaho.gov