

Regular Session, 2009

HOUSE BILL NO. 406

BY REPRESENTATIVE PEARSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE/HEALTH: Prohibits health insurers from requiring or using genetic testing and genetic information in certain circumstances

1 AN ACT

2 To amend and reenact R.S. 22:1023(A)(8) and (9) and to enact R.S. 22:1023(A)(16) and
3 (17), (B)(4) through (10), and (C)(6), relative to health insurance; to revise the
4 definitions of "genetic information" and "genetic test"; to add the definitions for
5 "genetic services" and "underwriting purposes"; to prohibit health insurers from
6 requesting or requiring genetic testing or genetic information under certain
7 circumstances; to prohibit health insurers from using genetic information for
8 underwriting purposes under certain circumstances; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 22:1023(A)(8) and (9) are hereby amended and reenacted and R.S.
12 22:1023(A)(16) and (17), (B)(4) through (10), and (C)(6) are hereby enacted to read as
13 follows:

14 §1023. Prohibited discrimination; genetic information; disclosure requirements;
15 definitions

16 A. As used in this Section, the following terms shall have the following
17 meanings:

18 * * *

1 (8)(a) "Genetic information" means all information about genes, gene
2 products, inherited characteristics, or family history/pedigree that is expressed in
3 common language: and shall include each of the following:

4 (i) An individual's genetic test.

5 (ii) The genetic tests of the family members of an individual.

6 (iii) The manifestation of a disease or disorder in family members of an
7 individual.

8 (iv) With respect to an individual or family member of an individual who is
9 a pregnant woman, genetic information of any fetus or embryo carried by such
10 pregnant woman; and with respect to an individual or family member of an
11 individual utilizing an assisted reproductive technology, genetic information of any
12 embryo legally held by the individual or family member.

13 (b) "Genetic information" shall not mean information about the sex or age
14 of any individual.

15 (9)(a) "Genetic test" means any test for determining the presence or absence
16 of genetic characteristics in an individual, including tests of nucleic acids, such as
17 DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose
18 or identify a genetic characteristic: or that detects genotypes, mutation, or
19 chromosomal changes.

20 (b) "Genetic test" shall not mean an analysis of proteins or metabolites that:

21 (i) Does not detect genotypes, mutations, or chromosomal changes; or

22 (ii) Is directly related to a manifested disease, disorder, or pathological
23 condition that could be reasonably detected by a health care professional with
24 appropriate training and expertise in the field of medicine involved.

25 * * *

26 (16) "Genetic services" means a genetic test, genetic counseling, including
27 obtaining, interpreting, or assessing genetic information, or genetic education.

28 (17) "Underwriting purposes" means rules for or determination of eligibility,
29 including enrollment and continued eligibility, for benefits under the plan or

1 coverage; the computation of premium or contribution amounts under the plan or
2 coverage; and other activities related to the creation, renewal, or replacement of a
3 contract or policy issued by an insurer.

4 B.

5 * * *

6 (4)(a) No insurer shall request, require, or purchase genetic information:

7 (i) Of an individual or family member of an individual for underwriting
8 purposes; or

9 (ii) With respect to any individual or family member of an individual prior
10 to such individual's enrollment under the plan or coverage in connection with such
11 enrollment.

12 (b) If an insurer offering health insurance coverage in the individual or group
13 market obtains genetic information incidental to the requesting, requiring, or
14 purchasing of other information concerning any individual, such request,
15 requirement, or purchase shall not be considered a violation of Item (a)(ii) of this
16 Paragraph if such request, requirement, or purchase is not in violation of Item (a)(i)
17 of this Paragraph.

18 (5)(a) No insurer shall request or require that an individual, a family member
19 of such individual, or a group member undergo a genetic test.

20 (b) Subparagraph (a) of this Paragraph shall not be construed to limit the
21 authority of a health care professional who is providing health care services to an
22 individual to request that such individual undergo a genetic test.

23 (6)(a) No insurer shall establish rules for eligibility, including continued
24 eligibility, of any individual or an individual's family member to enroll or continue
25 enrollment based on genetic information.

26 (b) Nothing in Subparagraph (a) of this Paragraph or in Items (4)(a)(i) and
27 (ii) of this Subsection shall be construed to preclude an insurer from establishing
28 rules for eligibility for an individual to enroll in individual health insurance coverage
29 based on the manifestation of a disease or disorder in that individual or in a family

1 member of such individual where such family member is covered under the policy
2 that covers such individual.

3 (7)(a) No insurer shall impose any preexisting condition exclusion on the
4 basis of genetic information of an individual, family member of an individual, or
5 group member.

6 (b) Nothing in Subparagraph (a) of this Paragraph or in Items (4)(a)(i) and
7 (ii) of this Subsection shall be construed to preclude an insurer offering coverage in
8 the individual market from imposing any preexisting condition exclusion for an
9 individual with respect to health insurance coverage on the basis of a manifestation
10 of a disease or disorder in that individual.

11 (8)(a) No insurer shall adjust premium or contribution amounts for an
12 individual or group health plan on the basis of genetic information concerning the
13 individual or a family member of the individual.

14 (b) Nothing in Subparagraph (a) of this Paragraph shall be construed to
15 preclude an insurer offering health insurance coverage in the individual market from
16 adjusting premium or contribution amounts for an individual on the basis of a
17 manifestation of a disease or disorder in that individual, or in a family member of
18 such individual where such family member is covered under the policy that covers
19 such individual. In such case, the manifestation of a disease or disorder in one
20 individual cannot also be used as genetic information about other individuals covered
21 under the policy issued to such individual and to further increase premium or
22 contribution amounts.

23 (c) Nothing in Subparagraph (a) of this Paragraph shall be construed to
24 preclude an insurer offering health insurance coverage in connection with a group
25 health plan from increasing the premium for an employer based upon the
26 manifestation of a disease or disorder of an individual who is enrolled in the plan.
27 In such case, the manifestation of a disease or disorder in one individual cannot also
28 be used as genetic information about other group members and to further increase
29 the premium for the employer.

1 ~~(9)(a) Nothing in Subparagraph (6)(a) of this Subsection shall be construed~~
2 ~~to preclude an insurer offering health insurance coverage in the individual or group~~
3 ~~market from obtaining and using the results of a genetic test in making a~~
4 ~~determination regarding payment, as such term is defined for the purposes of~~
5 ~~applying the regulations promulgated by the secretary of the United States~~
6 ~~Department of Health and Human Services under Part C of Title XI of the Social~~
7 ~~Security Act and Section 264 of the Health Insurance Portability and Accountability~~
8 ~~Act of 1996, consistent with Paragraphs (6) and (7) of this Subsection.~~

9 ~~(b) For purposes of Subparagraph (a) of this Paragraph, an insurer offering~~
10 ~~health insurance coverage in the individual or group market may request only the~~
11 ~~minimum amount of information necessary to accomplish the intended purpose.~~

12 ~~(10) Notwithstanding Subparagraph (5)(a) of this Subsection, an insurer~~
13 ~~offering health insurance coverage in the individual or group market may request,~~
14 ~~but not require, that an individual, family member of an individual, or a group~~
15 ~~member undergo a genetic test if each of the following conditions is met:~~

16 ~~(a) The request is made pursuant to research that complies with Part 46 of~~
17 ~~Title 45, Code of Federal Regulations, or equivalent federal regulations, and any~~
18 ~~applicable state or local law or regulations for the protection of human subjects in~~
19 ~~research.~~

20 ~~(b) The insurer clearly indicates to each individual, or in the case of a minor~~
21 ~~child, to the legal guardian of such child, to whom the request is made both that:~~

22 ~~(i) Compliance with the request is voluntary.~~

23 ~~(ii) Noncompliance will have no effect on enrollment status or premium, or~~
24 ~~contribution amounts.~~

25 ~~(c) No genetic information collected or acquired under this Paragraph shall~~
26 ~~be used for underwriting purposes.~~

27 ~~(d) The insurer notifies the secretary of the United States Department of~~
28 ~~Health and Human Services in writing that the issuer is conducting activities~~

1 pursuant to the exception provided for under this Paragraph, including a description
 2 of the activities conducted.

3 (e) The insurer complies with such other conditions as the secretary of the
 4 United States Department of Health and Human Services may by regulation require
 5 for activities conducted under this Paragraph.

6 C.

7 * * *

8 (6) Nothing in this Section shall exempt a covered entity from the
 9 requirements of the Health Insurance Portability and Accountability Act of 1996
 10 pertaining to the collection, use, or disclosure of genetic information, which for
 11 purposes of the Health Insurance Portability and Accountability Act of 1996, is
 12 defined as "health information" under 42 U.S.C. §1320d(4)(b) and 42 U.S.C.
 13 §1320d-9.

14 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Pearson

HB No. 406

Abstract: Prohibits health insurers from requesting or requiring genetic testing or genetic information under certain circumstances. Also prohibits health insurers from using genetic information for underwriting purposes under certain circumstances.

Present law defines "genetic information" as all information about genes, gene products, inherited characteristics, or family history/pedigree that is expressed in common language.

Proposed law additionally provides that "genetic information" shall include the following:

- (1) An individual's genetic test.
- (2) The genetic tests of an individual's family members.
- (3) The manifestation of a disease or disorder in an individual's family members.
- (4) With respect to an individual or his family member who is a pregnant woman, genetic information of any fetus or embryo carried by such pregnant woman.
- (5) With respect to an individual or his family member utilizing an assisted reproductive technology, genetic information of any embryo legally held by the individual or family member.

Further specifies that "genetic information" shall not mean information about the sex or age of any individual.

Present law defines "genetic test" as any test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids, such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose or identify a genetic characteristic.

Proposed law defines "genetic test" as any test that detects genotypes, mutation, or chromosomal changes. Specifies that "genetic test" shall not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes or that is directly related to a manifested disease, disorder, or pathological condition that could be reasonably detected by a health care professional with appropriate training and expertise in the field of medicine involved.

Proposed law additionally defines "genetic services" as a genetic test, genetic counseling, including obtaining, interpreting, or assessing genetic information, or genetic education.

Proposed law further defines "underwriting purposes" as rules for or determination of eligibility, including enrollment and continued eligibility, for benefits under the plan or coverage; the computation of premium or contribution amounts under the plan or coverage; and other activities related to the creation, renewal, or replacement of a contract or policy issued by an insurer.

Proposed law establishes certain prohibitions regarding requesting or requiring genetic testing or genetic information or using genetic information for underwriting purposes under certain circumstances, as follows:

- (1) Prohibits an insurer from requesting, requiring, or purchasing genetic information:
 - (a) Of an individual or his family member for underwriting purposes; or
 - (b) With respect to any individual or his family member prior to such individual's enrollment under the plan or coverage in connection with such enrollment.

Further provides that if an insurer offering health insurance coverage in the individual or group market obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such action shall not be considered a violation of (b) above if such action is not in violation of (a) above.

- (2) Prohibits an insurer from requesting or requiring that an individual, his family member, or a group member undergo a genetic test; however, provides that this prohibition shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.
- (3) Prohibits an insurer from establishing rules for eligibility, including continued eligibility, of any individual or an individual's family member to enroll or continue enrollment based on genetic information; however, provides that this prohibition and that contained in (1) above shall not be construed to preclude an insurer from establishing rules for eligibility for an individual to enroll in individual health insurance coverage based on the manifestation of a disease or disorder in that individual or in his family member where such family member is covered under the policy that covers such individual.

- (4) Prohibits an insurer from imposing any preexisting condition exclusion on the basis of genetic information of an individual, his family member, or group member. However, provides that this prohibition and that contained in (1) above shall not be construed to preclude an insurer offering coverage in the individual market from imposing any preexisting condition exclusion for an individual with respect to health insurance coverage on the basis of a manifestation of a disease or disorder in that individual.
- (5) Prohibits an insurer from adjusting premium or contribution amounts for an individual or group health plan on the basis of genetic information concerning the individual or a family member of the individual; however, provides that this prohibition shall not be construed to preclude an insurer offering health insurance coverage in the individual market from adjusting premium or contribution amounts for an individual on the basis of a manifestation of a disease or disorder in that individual, or in his family member where such family member is covered under the policy that covers such individual. Provides that, in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other individuals covered under the policy issued to such individual and to further increase premium or contribution amounts.

Additionally, provides that this prohibition shall not be construed to preclude an insurer offering health insurance coverage in connection with a group health plan from increasing the premium for an employer based upon the manifestation of a disease or disorder of an individual who is enrolled in the plan. Provides that, in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the employer.

- (6) Provides that the prohibition contained in (3) above, regarding the establishment of eligibility, shall not be construed to preclude an insurer offering health insurance coverage in the individual or group market from obtaining and using the results of a genetic test in making a determination regarding payment, as that term is defined for the purposes of applying the regulations promulgated by the secretary of the U.S. Department of Health and Human Services (HHS) under portions of the Social Security Act and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), consistent with (3) and (4) above. Further provides that for these purposes an insurer offering health insurance coverage in the individual or group market may request only the minimum amount of information necessary to accomplish the intended purpose.
- (7) Provides that, notwithstanding the prohibition contained in (2) above, regarding requiring or requesting genetic testing, an insurer offering health insurance coverage in the individual or group market may request, but not require, that an individual, his family member, or a group member undergo a genetic test if each of the following conditions is met:
- (a) The request is made pursuant to research that complies with certain federal regulations and any applicable state or local law or regulations for the protection of human subjects in research.
 - (b) The insurer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that compliance with the request is voluntary and that noncompliance will have no effect on enrollment status or premium or contribution amounts.
 - (c) No genetic information collected or acquired under this exception shall be used for underwriting purposes.

- (d) The insurer notifies the secretary of HHS in writing that the issuer is conducting activities pursuant to this exception, including a description of the activities conducted.
- (e) The insurer complies with such other conditions as the secretary of HHS may by regulation require for activities conducted under this exception.

Proposed law further provides that nothing in present law or proposed law relative to genetic information or testing shall exempt a covered entity from the requirements of HIPAA pertaining to the collection, use, or disclosure of genetic information, which for purposes of HIPAA is defined as "health information" under applicable federal law.

(Amends R.S. 22:1023(A)(8) and (9); Adds R.S. 22:1023(A)(16) and (17), (B)(4)-(10), and (C)(6))