

## CHAPTER 353

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**INSURANCE**


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**HOUSE BILL 09-1338**

BY REPRESENTATIVE(S) Casso, Kerr J., Pommer, Labuda;  
also SENATOR(S) Bacon.

**AN ACT**

**CONCERNING MODIFICATIONS TO STATE INSURANCE LAWS TO COMPLY WITH RECENTLY ENACTED  
FEDERAL LAWS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 10-3-1104.7 (1) (d), (2) (a), (3) (b), and (12) (a), Colorado Revised Statutes, are amended to read:

**10-3-1104.7. Genetic testing - legislative declaration - definitions - limitations on disclosure of information - liability.** (1) The general assembly hereby finds and determines that recent advances in genetic science have led to improvements in the diagnosis, treatment, and understanding of a significant number of human diseases. The general assembly further declares that:

(d) The intent of this ~~statute~~ SECTION is to prevent information derived from genetic testing from being used to deny access to ~~health care insurance~~; group disability insurance or long-term care insurance coverage.

(2) For the purposes of this section:

(a) "Entity" means any ~~sickness and accident insurance company, health maintenance organization, nonprofit hospital, medical-surgical and health service corporation, or other~~ entity that provides ~~health care insurance~~; group disability insurance or long-term care insurance coverage and is subject to the jurisdiction of the commissioner of insurance.

(3) (b) Any entity that receives information derived from genetic testing may not seek, use, or keep the information for any nontherapeutic purpose or for any underwriting purpose connected with the provision of ~~health care insurance~~; group

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

disability insurance or long-term care insurance coverage.

(12) Any individual who is injured by an entity's violation of this section may recover in a court of competent jurisdiction the following remedies:

(a) Equitable relief, which may include a retroactive order, directing the entity to provide ~~health insurance~~, group disability insurance or long-term care insurance coverage, whichever is appropriate, to the injured individual under the same terms and conditions as would have applied had the violation not occurred; and

**SECTION 2.** Part 11 of article 3 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**10-3-1104.6. Genetic information - limitations on disclosure of information - liability - definitions - legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT RECENT ADVANCES IN GENETIC SCIENCE HAVE LED TO IMPROVEMENTS IN THE DIAGNOSIS, TREATMENT, AND UNDERSTANDING OF A SIGNIFICANT NUMBER OF HUMAN DISEASES. THE GENERAL ASSEMBLY FURTHER DECLARES THAT:

(a) GENETIC INFORMATION IS THE UNIQUE PROPERTY OF THE INDIVIDUAL TO WHOM THE INFORMATION PERTAINS;

(b) ANY INFORMATION CONCERNING AN INDIVIDUAL OBTAINED THROUGH THE USE OF GENETIC SERVICES MAY BE SUBJECT TO ABUSES IF DISCLOSED TO UNAUTHORIZED THIRD PARTIES WITHOUT THE WILLING CONSENT OF THE INDIVIDUAL TO WHOM THE INFORMATION PERTAINS;

(c) TO PROTECT INDIVIDUAL PRIVACY AND TO PRESERVE INDIVIDUAL AUTONOMY WITH REGARD TO THE INDIVIDUAL'S GENETIC INFORMATION, IT IS APPROPRIATE TO LIMIT THE USE AND AVAILABILITY OF GENETIC INFORMATION;

(d) THE INTENT OF THIS SECTION IS TO PREVENT GENETIC INFORMATION FROM BEING USED TO DENY ACCESS TO HEALTH CARE INSURANCE OR MEDICARE SUPPLEMENT INSURANCE COVERAGE.

(2) FOR THE PURPOSES OF THIS SECTION:

(a) "ENTITY" MEANS ANY SICKNESS AND ACCIDENT INSURANCE COMPANY, HEALTH MAINTENANCE ORGANIZATION, NONPROFIT HOSPITAL, MEDICAL-SURGICAL AND HEALTH SERVICE CORPORATION, OR OTHER ENTITY THAT PROVIDES HEALTH CARE INSURANCE, OR MEDICARE SUPPLEMENT INSURANCE COVERAGE AND IS SUBJECT TO THE JURISDICTION OF THE COMMISSIONER OF INSURANCE.

(b) "FAMILY MEMBER" MEANS AN INDIVIDUAL WHO IS RELATED TO ANOTHER INDIVIDUAL BY BLOOD, ADOPTION, OR MARRIAGE WITHIN THE FIRST, SECOND, THIRD, OR FOURTH DEGREE.

(c) (I) "GENETIC INFORMATION" MEANS INFORMATION ABOUT AN INDIVIDUAL'S GENETIC TEST, THE GENETIC TESTS OF FAMILY MEMBERS OF THE INDIVIDUAL, AND THE MANIFESTATION OF A DISEASE OR DISORDER IN FAMILY MEMBERS OF THE

INDIVIDUAL. "GENETIC INFORMATION" INCLUDES ANY REQUEST FOR, OR RECEIPT OF, GENETIC SERVICES WITH RESPECT TO AN INDIVIDUAL, OR PARTICIPATION BY AN INDIVIDUAL OR THE FAMILY MEMBER OF AN INDIVIDUAL IN CLINICAL RESEARCH THAT INCLUDES GENETIC SERVICES.

(II) WITH REGARD TO AN INDIVIDUAL WHO IS PREGNANT, "GENETIC INFORMATION" INCLUDES GENETIC INFORMATION OF THE FETUS CARRIED BY THE PREGNANT INDIVIDUAL. WITH REGARD TO AN INDIVIDUAL OR FAMILY MEMBER USING REPRODUCTIVE TECHNOLOGY, "GENETIC INFORMATION" INCLUDES GENETIC INFORMATION OF ANY EMBRYO LEGALLY HELD BY AN INDIVIDUAL OR FAMILY MEMBER.

(III) "GENETIC INFORMATION" DOES NOT INCLUDE INFORMATION ABOUT THE SEX OR AGE OF AN INDIVIDUAL.

(d) "GENETIC SERVICES" MEANS A GENETIC TEST, GENETIC COUNSELING, WHICH INCLUDES OBTAINING, INTERPRETING, OR ASSESSING GENETIC INFORMATION, OR GENETIC EDUCATION.

(e) (I) "GENETIC TEST" MEANS ANY ANALYSIS OF HUMAN DNA, RNA, CHROMOSOMES, PROTEINS, OR METABOLITES THAT DETECTS GENOTYPES, MUTATIONS, OR CHROMOSOMAL CHANGES.

(II) "GENETIC TEST" DOES NOT INCLUDE:

(A) AN ANALYSIS OF PROTEINS OR METABOLITES THAT IS DIRECTLY RELATED TO A MANIFESTED DISEASE, DISORDER, OR PATHOLOGICAL CONDITION THAT COULD REASONABLY BE DETECTED BY A HEALTH CARE PROFESSIONAL WITH APPROPRIATE TRAINING AND EXPERTISE IN THE FIELD OF MEDICINE INVOLVED; OR

(B) AN ANALYSIS OF PROTEINS OR METABOLITES THAT DOES NOT DETECT GENOTYPES, MUTATIONS, OR CHROMOSOMAL CHANGES.

(f) "UNDERWRITING PURPOSES" MEANS ANY OF THE FOLLOWING:

(I) RULES FOR, OR DETERMINATION OF, ELIGIBILITY FOR ENROLLMENT OR CONTINUED ELIGIBILITY IN A POLICY OR FOR BENEFITS UNDER THE POLICY;

(II) THE COMPUTATION OF PREMIUM OR CONTRIBUTION AMOUNTS UNDER THE POLICY;

(III) THE APPLICATION OF ANY PREEXISTING CONDITION EXCLUSION UNDER THE POLICY; AND

(IV) OTHER ACTIVITIES RELATED TO THE CREATION, RENEWAL, OR REPLACEMENT OF A CONTRACT OF HEALTH INSURANCE OR HEALTH BENEFITS.

(3) (a) GENETIC INFORMATION SHALL BE CONFIDENTIAL AND PRIVILEGED. ANY RELEASE, FOR PURPOSES OTHER THAN DIAGNOSIS, TREATMENT, OR THERAPY, OF GENETIC INFORMATION THAT IDENTIFIES THE PERSON TESTED WITH THE TEST RESULTS RELEASED REQUIRES SPECIFIC WRITTEN CONSENT BY THE PERSON ABOUT

WHOM THE GENETIC INFORMATION PERTAINS OR THE PARENT OR GUARDIAN OF THAT PERSON.

(b) (I) ANY ENTITY THAT RECEIVES GENETIC INFORMATION MAY NOT SEEK, USE, OR KEEP THE INFORMATION FOR ANY NONTHERAPEUTIC PURPOSE OR FOR ANY UNDERWRITING PURPOSE CONNECTED WITH THE PROVISION OF HEALTH CARE INSURANCE OR MEDICARE SUPPLEMENT INSURANCE COVERAGE.

(II) IF AN ENTITY OBTAINS GENETIC INFORMATION INCIDENTAL TO A REQUEST OR REQUIREMENT FOR, OR PURCHASE OF, OTHER INFORMATION CONCERNING AN INDIVIDUAL, THE REQUEST OR REQUIREMENT FOR, OR PURCHASE OF, SUCH INFORMATION SHALL NOT BE CONSIDERED A VIOLATION OF THIS PARAGRAPH (b) IF IT IS NOT IN VIOLATION OF PARAGRAPH (a) OF THIS SUBSECTION (3).

(c) (I) AN ENTITY SHALL NOT REQUEST OR REQUIRE AN INDIVIDUAL OR FAMILY MEMBER OF THE INDIVIDUAL TO UNDERGO A GENETIC TEST UNLESS OTHERWISE AUTHORIZED BY APPLICABLE STATE OR FEDERAL LAW.

(II) NOTHING IN THIS PARAGRAPH (c) SHALL BE CONSTRUED TO PRECLUDE AN ENTITY FROM OBTAINING AND USING THE RESULTS OF A GENETIC TEST IN MAKING A DETERMINATION REGARDING PAYMENT, AS DEFINED IN 45 CFR 164.501, AS MAY BE AMENDED, AND CONSISTENT WITH PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (3).

(4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, IN THE COURSE OF A CRIMINAL INVESTIGATION OR A CRIMINAL PROSECUTION, AND TO THE EXTENT ALLOWED UNDER THE FEDERAL OR STATE CONSTITUTION, ANY PEACE OFFICER, DISTRICT ATTORNEY, OR ASSISTANT ATTORNEY GENERAL, OR A DESIGNEE THEREOF, MAY OBTAIN GENETIC INFORMATION REGARDING THE IDENTITY OF ANY INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL INVESTIGATION OR PROSECUTION FOR USE EXCLUSIVELY IN ANY CRIMINAL INVESTIGATION OR PROSECUTION WITHOUT THE CONSENT OF THE INDIVIDUAL BEING TESTED.

(5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, ANY RESEARCH FACILITY MAY USE GENETIC INFORMATION FOR SCIENTIFIC RESEARCH PURPOSES IF THE IDENTITY OF ANY INDIVIDUAL TO WHOM THE INFORMATION PERTAINS IS NOT DISCLOSED TO ANY THIRD PARTY; EXCEPT THAT THE INDIVIDUAL'S IDENTITY MAY BE DISCLOSED TO THE INDIVIDUAL'S PHYSICIAN IF THE INDIVIDUAL CONSENTS TO THE DISCLOSURE IN WRITING.

(6) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A COURT OR ANY PARTY TO A PARENTAGE PROCEEDING TO USE GENETIC INFORMATION FOR PURPOSES OF DETERMINING PARENTAGE PURSUANT TO SECTION 13-25-126, C.R.S.

(7) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A COURT OR ANY PARTY TO A PROCEEDING THAT IS SUBJECT TO THE LIMITATIONS OF PART 5 OF ARTICLE 64 OF TITLE 13, C.R.S., TO USE GENETIC INFORMATION FOR PURPOSES OF DETERMINING THE CAUSE OF DAMAGE OR INJURY.

(8) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE STATE BOARD OF PAROLE TO REQUIRE ANY OFFENDER WHO IS INVOLVED IN A SEXUAL ASSAULT TO SUBMIT TO BLOOD TESTS AND TO RETAIN THE RESULTS OF SUCH TESTS ON FILE AS

AUTHORIZED UNDER SECTION 17-2-201 (5) (g), C.R.S.

(9) THIS SECTION DOES NOT LIMIT THE AUTHORITY GRANTED THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE STATE BOARD OF HEALTH, OR LOCAL DEPARTMENTS OF HEALTH PURSUANT TO SECTION 25-1-122, C.R.S.

(10) ANY VIOLATION OF THIS SECTION IS AN UNFAIR PRACTICE AS DEFINED IN SECTION 10-3-1104(1), AND IS SUBJECT TO THE PROVISIONS OF SECTIONS 10-3-1106 TO 10-3-1113.

(11) ANY INDIVIDUAL WHO IS INJURED BY AN ENTITY'S VIOLATION OF THIS SECTION MAY RECOVER IN A COURT OF COMPETENT JURISDICTION THE FOLLOWING REMEDIES:

(a) EQUITABLE RELIEF, WHICH MAY INCLUDE A RETROACTIVE ORDER, DIRECTING THE ENTITY TO PROVIDE HEALTH INSURANCE OR MEDICARE SUPPLEMENT INSURANCE COVERAGE, WHICHEVER IS APPROPRIATE, TO THE INJURED INDIVIDUAL UNDER THE SAME TERMS AND CONDITIONS AS WOULD HAVE APPLIED HAD THE VIOLATION NOT OCCURRED; AND

(b) THE GREATER OF:

(I) AN AMOUNT EQUAL TO ANY ACTUAL DAMAGES SUFFERED BY THE INDIVIDUAL AS A RESULT OF THE VIOLATION; OR

(II) TEN THOUSAND DOLLARS PER VIOLATION.

(12) THE PREVAILING PARTY IN AN ACTION UNDER THIS SECTION MAY RECOVER COSTS AND REASONABLE ATTORNEY FEES.

**SECTION 3.** 10-16-102 (26) (e), Colorado Revised Statutes, is amended, and the said 10-16-102 (26) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

**10-16-102. Definitions.** As used in this article, unless the context otherwise requires:

(26) "Late enrollee" means an eligible employee or dependent who requests enrollment in a group health benefit plan following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, if such initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if:

(e) The parent or legal guardian of the dependent disenrolls the dependent from, OR THE DEPENDENT OTHERWISE BECOMES INELIGIBLE FOR, the children's basic health plan, established pursuant to article 8 of title 25.5, C.R.S., and requests enrollment of the dependent no later than ninety days after the disenrollment.

(f) THE EMPLOYEE OR DEPENDENT IS ENROLLED IN THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., IS TERMINATED FROM THE PROGRAM AS A

RESULT OF LOSS OF ELIGIBILITY FOR THE PROGRAM, AND REQUESTS COVERAGE UNDER THE GROUP HEALTH BENEFIT PLAN WITHIN SIXTY DAYS AFTER THE DATE OF TERMINATION FROM THE PROGRAM.

(g) THE EMPLOYEE OR DEPENDENT BECOMES ELIGIBLE FOR PREMIUM ASSISTANCE UNDER THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., OR THE CHILDREN'S BASIC HEALTH PLAN ESTABLISHED IN ARTICLE 8 OF TITLE 25.5, C.R.S., INCLUDING UNDER ANY WAIVER OR DEMONSTRATION PROJECT CONDUCTED UNDER OR IN RELATION TO SUCH ACT OR PLAN, AND THE EMPLOYEE OR DEPENDENT REQUESTS COVERAGE UNDER THE GROUP HEALTH BENEFIT PLAN WITHIN SIXTY DAYS AFTER THE DATE THE EMPLOYEE OR DEPENDENT IS DETERMINED TO BE ELIGIBLE FOR SUCH ASSISTANCE.

**SECTION 4.** The introductory portion to 10-16-104 (5) and 10-16-104 (5) (e), (5) (f), (5) (g), and (5.5) (b), Colorado Revised Statutes, are amended to read:

**10-16-104. Mandatory coverage provisions - definitions. (5) Mental illness.** Every SMALL group policy ~~or contract~~ providing hospitalization or medical benefits by an entity subject to the provisions of part 2 or 3 of this article shall provide benefits for conditions arising from mental illness at least equal to the following:

(e) The commissioner may exempt from the requirements of paragraphs (a) and (b) of this subsection (5) any SMALL GROUP policy or type of SMALL GROUP policy with respect to which the commissioner has determined that the prescribed mental illness benefits are inapplicable or inappropriate.

(f) The provisions of paragraphs (a) to (e) of this subsection (5) shall apply to all SMALL group policies ~~or contracts~~ issued, renewed, or reinstated on and after January 1, 1976.

(g) Every SMALL group ~~health care service~~ plan THAT IS A HEALTH CARE SERVICE PLAN providing hospitalization or medical benefits under the provisions of part 4 of this article shall provide benefits for conditions arising from mental illness at least equal to the benefits required by this subsection (5). The health care service plan issued by an entity subject to the provisions of part 4 of this article may provide that the benefits required pursuant to this subsection (5) shall be covered benefits only if the services are rendered by a provider who is designated by and affiliated with the health maintenance organization.

**(5.5) Biologically based mental illness and mental disorders.** (b) Benefits provided under this subsection (5.5) THROUGH A SMALL GROUP PLAN are not required to be provided to the extent that such benefits duplicate benefits required to be provided under subsection (5) of this section.

**SECTION 5.** 10-16-104.3, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**10-16-104.3. Dependent health coverage for persons under twenty-five years of age - coverage for students who take medical leave of absence.** (3) (a) ALL INDIVIDUAL AND GROUP SICKNESS AND ACCIDENT INSURANCE POLICIES PROVIDING COVERAGE WITHIN THE STATE BY AN ENTITY SUBJECT TO THE PROVISIONS OF PART

2 OF THIS ARTICLE AND ALL GROUP HEALTH SERVICE CONTRACTS ISSUED BY AN ENTITY SUBJECT TO THE PROVISIONS OF PART 3 OR 4 OF THIS ARTICLE THAT PROVIDE DEPENDENT COVERAGE TO A CHILD WHO IS ENROLLED IN A POSTSECONDARY EDUCATIONAL INSTITUTION SHALL NOT TERMINATE COVERAGE DUE TO A MEDICALLY NECESSARY LEAVE OF ABSENCE BEFORE THE DATE THAT IS THE EARLIER OF:

(I) ONE YEAR AFTER THE FIRST DAY OF THE MEDICALLY NECESSARY LEAVE OF ABSENCE; OR

(II) THE DATE THE COVERAGE WOULD OTHERWISE TERMINATE UNDER THE TERMS OF THE PLAN OR HEALTH INSURANCE COVERAGE.

(b) FOR PURPOSES OF THIS SUBSECTION (3), "MEDICALLY NECESSARY LEAVE OF ABSENCE" MEANS A LEAVE OF ABSENCE FROM A POSTSECONDARY EDUCATIONAL INSTITUTION OR A CHANGE IN ENROLLMENT OF THE DEPENDENT AT THE INSTITUTION THAT:

(I) BEGINS WHILE THE DEPENDENT IS SUFFERING FROM A SERIOUS ILLNESS;

(II) IS MEDICALLY NECESSARY; AND

(III) CAUSES THE DEPENDENT TO LOSE STUDENT STATUS FOR THE PURPOSE OF DEPENDENT COVERAGE.

**SECTION 6. Effective date - applicability.** This act shall take effect July 1, 2009, and shall apply to policies and contracts issued, delivered, renewed, or reinstated on or after said date.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2009