Genetic Testing and Insurance

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Underwriting and Risk Classification

- Underwriting (risk classification) is the process that insurers use to identify and classify a person’s risk of dying prematurely, becoming disabled or needing long-term care.

- Health information that has been shown to be accurate predictors of risk is collected and analyzed (e.g., build, blood pressure, cholesterol, tobacco use, family history, existing or past disease, etc.).

- By law, similar risks must be treated similarly.

- A key benefit of underwriting/risk segmentation is that it enables insurers to make products widely available at the lowest prices to as many people as possible.

- Unlike health and property/casualty insurance, life, disability income and long-term care underwriting is a one time event.
Adverse or Anti-Selection

- Adverse or anti-selection occurs when the applicant knows information that would increase his mortality/morbidity risk but doesn’t disclose it on the application. This leads the insurer to assign the applicant to a lower risk pool than they otherwise would have.

- To avoid adverse selection, there must be a level playing field of information. That is, the insurer needs to know what the applicant knows about their health.

- Adverse selection can destabilize the voluntary individual insurance market, because it tends to lead to premium increases which discourages healthy individuals from purchasing coverage.

- Studies show adverse selection occurs, especially in long-term care insurance.
Notice of Adverse Underwriting Decision

- Insurers must notify applicants of any adverse underwriting decision
  - Notification must include the right to access the reason for the adverse underwriting decision and the right to access and correct the information
- Adverse notification is defined as
  - Declination of coverage
  - Offer to insurer at worse than standard rates
  - Failure to apply at an insurer requested by the applicant that the agent represents
Federal Regulation

- Genetic Information Nondiscrimination Act (GINA)
  - Passed by Congress 2008
  - Prohibits insurers use of genetic test results and family history in determining eligibility for health insurance
  - Prohibits insurers from requesting or requiring a genetic test for health insurance
  - Prohibits employers from using genetic information or requesting a genetic test in determining employment eligibility
  - Allows an insurer to determine health insurance premium or eligibility based on a genetic disorder only if there is manifested disease
  - Does not apply to life, long-term care (LTC) or disability insurance (DI)

State genetic testing prohibitions

- Distinction between the use of an existing test result vs. requiring an applicant to take a test
- Informed consent requirements
- Restrictions vary depending on LOB (DI, LTC, Life)
- Some states prohibit “unfair discrimination” but allow test results if the use of such information is based on sound actuarial principles or actual or reasonably anticipated experience.
State genetic testing prohibitions

- ACLI supports legislation and regulation that permit life, long-term care and disability income insurance to use any relevant health information, based on sound actuarial principles or actual or reasonably anticipated experience.

- Under some circumstances, ACLI may amend our policy stance – discussions ongoing at the Risk Classification Committee and Genetic Testing Task Force.
State Statutes

- **VT 18 V.S.A. § 9334** *(1999)*
  - No policy of insurance shall be underwritten on the basis of:
    - Any requirement to undergo genetic testing
    - The results of genetic testing of a family member

- **VT 8 V.S.A. § 4724** – Unfair discrimination:
  - Conditioning insurance rates on the results of genetic testing where there is no relationship between the information and the risk
  - Insurer can rely on actual or reasonable anticipated experience to establish the relationship

*Vermont Title 18 Vermont Statute Annotated 9334 – Genetic testing as a condition of insurance coverage  **Vermont Title 8 Vermont Statute Annotated 4724 – Unfair methods of competition or unfair or deceptive acts or practices defined
State Statutes

- **MA 175 § 120E* (2006)**
  - Insurer may not use genetic test results to determine eligibility/premium unless action relates to insurer’s mortality or morbidity based on sound actuarial principles or reasonable expected experience
  - Insurer may not require an applicant to undergo a genetic test as a condition issuance or renewal of a policy
  - Insurer may ask an applicant if she/he has undergone a genetic test. Applicant is not required to answer, but if they decline to answer, the application must note that this may result in a higher premium or denial of coverage
  - If applicant provides genetic information, insurer may use that information to determine eligibility or premium provided the information relates to insurer’s mortality or morbidity based on sound actuarial principles or reasonable expected experience

*Massachusetts General Laws Chapter 175 Section 120E - Life insurance policies; genetic tests; discrimination based on genetic information*
State Statutes

- **MD § 18-120* (2008)**
  - Long-term care insurers may not:
    - Request or require a genetic test as a condition of insurance
    - Use the results of a genetic test to deny or limit coverage or charge a different rate
    - Long-term care insurers may deny or limit coverage or charge a different rate based on the results of a genetic test provided the action is based on sound actuarial principles

*Maryland Code, Insurance Section 18-120 – Prohibited acts*
2019 State Legislative Activity

Connecticut – H 7262 / H 6544
Delaware – S 17
Florida – S 258 / H 879
Illinois – S 1307
Maine – H 949
North Carolina – H 514 / S 455
In Conclusion

- The economic success of voluntary insurance products hinges on a level playing field of information for appropriate and fair risk categorization
- The field of genomics is growing logarithmically
- The clinical use of genetic information remains limited, but is expanding at a rapid pace and will become commonplace over time
- Public discourse needs to consider all stakeholders in order to maintain wide access to competitively priced insurance products while protecting individual privacy rights and allaying concerns over proper information use
Questions?