

TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 24 GENETIC INFORMATION NONDISCRIMINATION - MEDICARE SUPPLEMENT PLANS

13.10.24.1 ISSUING AGENCY: New Mexico Public Regulation Commission Insurance Division.
[13.10.24.1 NMAC - N/E, 05/26/09]

13.10.24.2 SCOPE: This rule applies to all insurers issuing or delivering in the state of New Mexico medicare supplement policies, certificates or contracts with policy years beginning on or after May 21, 2009.
[13.10.24.2 NMAC - N/E, 05/26/09]

13.10.24.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-24A-1 et seq. NMSA 1978.
[13.10.24.3 NMAC - N/E, 05/26/09]

13.10.24.4 DURATION: Permanent.
[13.10.24.4 NMAC - N/E, 05/26/09]

13.10.24.5 EFFECTIVE DATE: May 26, 2009, unless a later date is cited at the end of a section.
[13.10.24.5 NMAC - N/E, 05/26/09]

13.10.24.6 OBJECTIVE: The purpose of this rule is to provide for nondiscrimination based on genetic information in the issuance and pricing of medicare supplement policies or certificates of coverage, and to generally prohibit insurers' requests for genetic testing except for limited use in determining payment for treatment and for genetic testing when used as part of certain scientific research using human subjects.
[13.10.24.6 NMAC - N/E, 05/26/09]

13.10.24.7 DEFINITIONS: As used in this rule:

A. "certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement policy;

B. "family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual;

C. "genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual; such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual; any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member; the term "genetic information" does not include information about the sex or age of any individual;

D. "genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education;

E. "genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes; the term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or 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;

F. "issuer of a medicare supplement policy or certificate" includes insurance companies, fraternal benefit societies, nonprofit health care plans, health maintenance organizations and any other entity delivering or issuing for delivery in this state medicare supplement policies or certificates, and includes a third-party administrator, or other person acting for or on behalf of such issuer;

G. "medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended;

H. “medicare supplement policy” means a group or individual policy of insurance or a subscriber contract other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under medicare for the hospital, medical or surgical expenses of persons eligible for medicare; “medicare supplement policy” does not include medicare advantage plans established under medicare part C, outpatient prescription drug plans established under medicare part D, or any health care prepayment plan (HCPP) that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act;

I. “secretary” means the secretary of the United States department of health and human services;

J. “underwriting purposes” means:

- (1) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;
- (2) the computation of premium or contribution amounts under the policy;
- (3) the application of any pre-existing condition exclusion under the policy; and
- (4) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

[13.10.24.7 NMAC - N/E, 05/26/09]

13.10.24.8 NONDISCLOSURE REQUIREMENTS AND EXCEPTIONS:

A. An issuer of a medicare supplement policy or certificate:

(1) shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) on the basis of the genetic information with respect to such individual; and

(2) shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual.

B. Nothing in Subsection A of 13.10.24.8 NMAC shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from:

(1) denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(2) increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (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 group).

C. An issuer of a medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

D. Subsection C of 13.10.24.8 NMAC shall not be construed to preclude an issuer of a medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment.

(1) Payment shall be defined as for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) and consistent with Subsection A of 13.10.24.8 NMAC.

(2) An issuer of a medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose of this subsection.

E. Notwithstanding Subsection C of 13.10.24.8 NMAC, an issuer of a medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(1) the request is made pursuant to research that complies with part 46 of title 45, code of federal regulations (CFR), or equivalent federal regulations, and any applicable state or local law or regulations for the protection of human subjects in research;

(2) the issuer 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 non-compliance will have no effect on enrollment status or premium or contribution amounts;

(3) the genetic information collected or acquired under this subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate;

(4) the issuer notifies the secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted; and

(5) the issuer complies with such other conditions as the secretary may by regulation require for activities conducted under this subsection.

F. An issuer of a medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

G. An issuer of a medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

H. If an issuer of a medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subsection G of 13.10.24.8 NMAC if such request, requirement, or purchase is not in violation of Subsection F of 13.10.24.8 NMAC.

[13.10.24.8 NMAC - N/E, 05/26/09]

13.10.24.9 PENALTIES: In addition to any applicable suspension, revocation or refusal to continue any certificate of authority or license under the insurance code, a penalty for any material violation of this rule may be imposed against a health care insurer by the superintendent in accordance with Sections 59A-1-18 NMSA 1978.

[13.10.24.9 NMAC - N/E, 05/26/09]

13.10.24.10 SEVERABILITY: If any section of this rule, or the applicability of any section to any person or circumstance, is for any reason held invalid by a court of competent jurisdiction, the remainder of the rule, or the applicability of such provisions to other persons or circumstances, shall not be affected.

[13.10.24.10 NMAC - N/E, 05/26/09]

HISTORY OF 13.10.24 NMAC: [RESERVED]