

191—37.34(514D) Prohibitions against use of genetic information and against requests for genetic testing. This rule applies to all Medicare supplement policies or certificates with policy years beginning on or after May 21, 2009.

37.34(1) Definitions. For the purposes of this rule, the following definitions shall apply:

“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.

“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. “Genetic information” 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.

“Genetic services” means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

“Genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes. The term “genetic test” does not mean:

1. An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or
2. 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.

“Issuer of a Medicare supplement policy or certificate” means the same as “issuer” as defined in rule 191—37.3(514D) and includes a third-party administrator, or other person acting for or on behalf of such issuer.

“Underwriting purposes” means:

1. Rules for or determination of eligibility (including enrollment and continued eligibility) for benefits under the Medicare supplement policy or certificate;
2. The computation of premium or contribution amounts under the Medicare supplement policy or certificate;
3. The application of any preexisting condition exclusion under the Medicare supplement policy or certificate; and
4. Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

37.34(2) Use of genetic information by issuer prohibited. An issuer of a Medicare supplement policy or certificate:

- a. Shall not deny or condition the issuance or effectiveness of the Medicare supplement policy or certificate (including the imposition of any exclusion of benefits under the policy based on a preexisting condition) of an individual on the basis of the genetic information with respect to such individual; and
- b. Shall not discriminate in the pricing of the Medicare supplement policy or certificate (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual.

37.34(3) What prohibition does not include. Nothing in subrule 37.34(2) shall be construed to limit the ability of an issuer of a Medicare supplement policy or certificate, to the extent otherwise permitted by law, from:

- a. Denying or conditioning the issuance or effectiveness of the Medicare supplement policy or certificate or increasing the premium for a group plan based on the manifestation of a disease or disorder of a covered individual or applicant; or

b. Increasing the premium for any Medicare supplement policy or certificate issued to an individual based on the manifestation of a disease or disorder of another individual who is covered under the Medicare supplement 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 insured group.

37.34(4) *Issuer prohibited from requiring genetic testing.* 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.

37.34(5) *Obtaining and using test results to determine payment.* Subrule 37.34(4) 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 (as defined for the purposes of applying the regulations promulgated under Medicare 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 subrule 37.34(2). However, for purposes of carrying out this subrule, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

37.34(6) *Conditions when issuer may request a genetic test.* Notwithstanding subrule 37.34(4), an issuer of a Medicare supplement policy or certificate 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:

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

b. The issuer of a Medicare supplement policy or certificate 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:

(1) Compliance with the request is voluntary; and

(2) Noncompliance will have no effect on enrollment status or premium or contribution amounts.

c. No genetic information collected or acquired under this subrule shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a Medicare supplement policy or certificate.

d. The issuer of a Medicare supplement policy or certificate notifies the Secretary in writing that the issuer of a Medicare supplement policy or certificate is conducting activities pursuant to the exception provided for under this subrule, including a description of the activities conducted.

e. The issuer of a Medicare supplement policy or certificate complies with such other conditions as the Secretary may by regulation require for activities conducted under this subrule.

37.34(7) *Issuer prohibited from actively obtaining genetic information for underwriting.* An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

37.34(8) *Issuer prohibited from actively obtaining genetic information for enrollment.* 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.

37.34(9) *Obtaining information incidentally not a violation.* 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 subrule 37.34(8) if such request, requirement, or purchase is not in violation of subrule 37.34(7).

[ARC 4394C, IAB 4/10/19, effective 5/15/19]