H. R. 1910

To prohibit discrimination on the basis of genetic information with respect to health insurance.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 2003

Ms. Slaughter (for herself, Mr. Abercrombie, Mr. Ackerman, Mr. Allen, Ms. Berkley, Mr. Berman, Mrs. Biggert, Mr. Bishop of New York, Ms. Bordallo, Mr. Boswell, Mr. Boyd, Mr. Burton of Indiana, Mrs. Capps, Mr. Capuano, Mr. Cardin, Ms. Carson of Indiana, Mr. Case, Mrs. Christensen, Mr. Cooper, Mr. Costello, Mr. Crowley, Mr. Cummings, Mr. Davis of Florida, Mrs. Davis of California, Mr. DeFazio, Ms. DeGette, Ms. Delauro, Mr. Dicks, Mr. Dingell, Mr. Doyle, Mr. Engel, Mr. Farr, Mr. Foley, Mr. Frank of Massachusetts, Mr. Frelinghuysen, Mr. Frost, Mr. Gilchrest, Mr. Gillmor, Mr. Gordon, Ms. Granger, Mr. Green of Texas, Mr. Gutierrez, Mr. Hefley, Mr. Hinchey, Mr. Hinojosa, Mr. Hoefelf, Mr. Holt, Mr. Hyde, Mr. Inslee, Mr. Israel, Ms. Jackson-Lee of Texas, Ms. Eddie Bernice Johnson of Texas, Mrs. Jones of Ohio, Mr. Kanjorski, Ms. Kaptur, Mrs. Kelly, Mr. Kennedy of Rhode Island, Mr. Kildee, Mr. King of New York, Mr. Kucinich, Mr. Lantos, Mr. LaTourette, Mr. Leach, Mr. LoBiondo, Ms. Lofgren, Mrs. Lowey, Mrs. Maloney, Mr. Markey, Mr. Matsui, Mrs. McCarthy of New York, Mr. McDermott, Mr. McHugh, Mr. McIntyre, Mr. McNulty, Mr. Meehan, Mr. Menendez, Mr. Mica, Ms. Millender-McDonald, Mr. George Miller of California, Mr. Moore, Mr. Moran of Virginia, Mr. Nadler, Mr. Ney, Mrs. Northup, Ms. Norton, Mr. Obey, Mr. Owens, Ms. Pelosi, Mr. Platts, Mr. Rangel, Mr. Rothman, Ms. Roybal-Allard, Ms. Linda T. Sánchez of California, Ms. Loretta Sanchez of California, Mr. Sanders, Ms. Schakowsky, Mr. Schiff, Mr. Serrano, Mr. Shays, Mr. Sherman, Mr. Simmons, Mr. Stark, Mr. Strickland, Mrs. Tauscher, Mr. Tierney, Mr. Udall of New Mexico, Ms. Velázquez, Mr. Walsh, Mr. Wamp, Mr. Waxman, Mr. Wexler, and Ms. Woolsey) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
A BILL

To prohibit discrimination on the basis of genetic information with respect to health insurance.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the
“Genetic Nondiscrimination in Health Insurance and Em-
ployment Act”.

(b) TABLE OF CONTENTS.—The table of contents is
as follows:

Sec. 1. Short title and table of contents.

TITLE I—PROHIBITION OF HEALTH INSURANCE DISCRIMINATION ON THE BASIS OF PROTECTED GENETIC INFORMATION

Sec. 102. Amendments to the Public Health Service Act.
Sec. 103. Amendments to Internal Revenue Code of 1986.
Sec. 104. Amendments to Title XVIII of the Social Security Act relating to Medigap.

TITLE II—PROHIBITION OF EMPLOYMENT DISCRIMINATION ON THE BASIS OF PROTECTED GENETIC INFORMATION

Sec. 201. Definitions.
Sec. 203. Employment agency practices.
Sec. 204. Labor organization practices.
Sec. 205. Training programs.
Sec. 206. Maintenance and disclosure of protected genetic information.
Sec. 207. Civil action.
Sec. 208. Exceptions; rules of construction.
Sec. 209. Authorization of appropriations.
Sec. 210. Effective date.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Severability.
TITLE I—PROHIBITION OF HEALTH INSURANCE DISCRIMINATION ON THE BASIS OF PROTECTED GENETIC INFORMATION

SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) Prohibition of Health Insurance Discrimination on the Basis of Genetic Services or Protected Genetic Information.—

(1) No enrollment restriction for genetic services.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period “(or information about a request for or the receipt of genetic services by such individual or family member of such individual)”.

(2) No discrimination in group rate based on protected genetic information.—

(A) In general.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:
"SEC. 714. PROHIBITING DISCRIMINATION AGAINST GROUPS ON THE BASIS OF PROTECTED GENETIC INFORMATION.

“A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not deny eligibility to a group or adjust premium or contribution rates for a group on the basis of protected genetic information concerning an individual in the group (or information about a request for or the receipt of genetic services by such individual or family member of such individual).”.

(B) CONFORMING AMENDMENTS.—

(i) Section 702(b)(2)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended to read as follows:

“(A) to restrict the amount that an employer may be charged for coverage under a group health plan, except as provided in section 714; or”.

(ii) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a)) is amended by striking “section 711” and inserting “subsections (a)(1)(F), (b) (with respect to cases relating to genetic information or in-
formation about a request or receipt of genetic services by an individual or family member of such individual), (c), (d), (e), (f), or (g) of section 702, section 711 and section 714”.

(b) LIMITATIONS ON GENETIC TESTING AND ON COLLECTION AND DISCLOSURE OF PROTECTED GENETIC INFORMATION.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

“(c) GENETIC TESTING.—

“(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

“(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to limit the authority of a health care professional, who is providing treatment with respect to an individual and who is employed by a group health plan or a health insurance issuer, to request that such individual or family member of such individual undergo a genetic test. Such a health care professional shall not require
that such individual or family member undergo a genetic test.

“(3) Certain Tests.—The conducting of metabolic tests that are not intended to reveal protected genetic information shall not be considered a violation of the preceding provisions of this subsection regardless of the results of the tests. Test results that are protected genetic information shall be subject to the applicable provisions of this part.

“(d) Collection of Protected Genetic Information.—Except as provided in subsections (f) and (g), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, collect, or purchase protected genetic information concerning an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

“(e) Disclosure of Protected Genetic Information.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not disclose protected genetic information about an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual) to—
“(1) any entity that is a member of the same
controlled group as such issuer or plan sponsor of
such group health plan;

“(2) any other group health plan or health in-
surance issuer or any insurance agent, third party
administrator, or other person subject to regulation
under State insurance laws;

“(3) the Medical Information Bureau or any
other person that collects, compiles, publishes, or
otherwise disseminates insurance information;

“(4) the individual’s employer or any plan spon-
sor; or

“(5) any other person the Secretary may speci-
ify in regulations.

“(f) INFORMATION FOR PAYMENT FOR GENETIC
SERVICES.—

“(1) IN GENERAL.—With respect to payment
for genetic services conducted concerning an indi-
vidual or the coordination of benefits, a group health
plan, or a health insurance issuer offering group
health insurance coverage in connection with a group
health plan, may request that the individual provide
the plan or issuer with evidence that such services
were performed.
“(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to—

“(A) permit a group health plan or health insurance issuer to request (or require) the results of the services referred to in such paragraph; or

“(B) require that a group health plan or health insurance issuer make payment for services described in such paragraph where the individual involved has refused to provide evidence of the performance of such services pursuant to a request by the plan or issuer in accordance with such paragraph.

“(g) INFORMATION FOR PAYMENT OF OTHER CLAIMS.—With respect to the payment of claims for benefits other than genetic services, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, may request that an individual provide protected genetic information so long as such information—

“(1) is used solely for the payment of a claim; and

“(2) is limited to information that is directly related to and necessary for the payment of such claim and the claim would otherwise be denied but for the protected genetic information; and
“(3) is used only by an individual (or individuals) within such plan or issuer who needs access to such information for purposes of payment of a claim.

“(h) Rules of Construction.—

“(1) Collection or disclosure authorized by individual.—The provisions of subsections (d) (regarding collection) and (e) shall not apply to an individual if the individual (or legal representative of the individual) provides prior, knowing, voluntary, and written authorization for the collection or disclosure of protected genetic information.

“(2) Disclosure for health care treatment.—Nothing in this section shall be construed to limit or restrict the disclosure of protected genetic information from a health care provider to another health care provider for the purpose of providing health care treatment to the individual involved.

“(i) Definitions.—In this section:

“(1) Controlled group.—The term ‘controlled group’ means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

“(2) Group health plan, health insurance issuer.—The terms ‘group health plan’ and
‘health insurance issuer’ include a third party administrator or other person acting for or on behalf of such plan or issuer.”.

(c) Enforcement.—Section 502 (29 U.S.C. 1132) is amended by adding at the end the following:

“(n) Violation of Genetic Discrimination or Genetic Disclosure Provisions.—

“(1) In general.—In any action under this section against any administrator of a group health plan, or health insurance issuer offering group health insurance coverage in connection with a group health plan (including any third party administrator or other person acting for or on behalf of such plan or issuer) alleging a violation of subsection (a)(1)(F), (b) (with respect to cases relating to genetic information or information about a request or receipt of genetic services by an individual or family member of such individual), (c), (d), (e), (f), or (g) of section 702, or section 714, the court may award any appropriate legal or equitable relief. Such relief may include a requirement for the payment of attorney’s fees and costs, including the costs of expert witnesses.

“(2) Civil penalty.—In any action described in paragraph (1), the Secretary may, to vindicate
the public interest, assess a civil penalty against the
defendant in an amount—

“(A) not exceeding $50,000 for a first viola-
tion, and

“(B) not exceeding $100,000 for any sub-
sequent violation.

Any such relief awarded shall be paid into the gen-
eral fund of the Treasury.”.

(d) PREEMPTION.—Section 731 of the Employee Re-
is amended—

(1) in subsection (a)(1), by inserting “or (e)”
after “subsection (b)”; and

(2) by adding at the end the following:

“(e) SPECIAL RULE IN CASE OF GENETIC INFORMA-
TION.—With respect to group health insurance coverage
offered by a health insurance issuer, the provisions of this
part relating to genetic information (including information
about a request for or the receipt of genetic services by
an individual or a family member of such individual) shall
not be construed to supersede any provision of State law
which establishes, implements, or continues in effect a
standard, requirement, or remedy that more completely—

“(1) protects the confidentiality of genetic in-
formation (including information about a request for
or the receipt of genetic services by an individual or a family member of such individual) or the privacy of an individual or a family member of the individual with respect to genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) than does this part; or

“(2) prohibits discrimination on the basis of genetic information than does this part.”.

(e) Definitions.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

“(5) Family member.—The term ‘family member’ means with respect to an individual—

“(A) the spouse of the individual;

“(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

“(C) any other individuals related by blood to the individual or to the spouse or child described in subparagraph (A) or (B).

“(6) Genetic information.—The term ‘genetic information’ means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member of
such individual (including information about a request for or the receipt of genetic services by such individual or family member of such individual).

“(7) GENETIC SERVICES.—The term ‘genetic services’ means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

“(8) GENETIC TEST.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

“(9) PROTECTED GENETIC INFORMATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘protected genetic information’ means—

“(i) information about an individual’s genetic tests;

“(ii) information about genetic tests of family members of the individual; and

“(iii) information about the occurrence of a disease or disorder in family members.

“(B) LIMITATIONS.—The term ‘protected genetic information’ shall not include—
“(i) information about the sex or age of the individual;

“(ii) information about chemical, blood, or urine analyses of the individual, unless these analyses are genetic tests; or

“(iii) information about physical exams of the individual, and other information that indicates the current health status of the individual.”.

(f) Amendment Concerning Supplemental Excepted Benefits.—Section 732(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(c)(3)) is amended by inserting “, other than the requirements of subsections (a)(1)(F), (b) (in cases relating to genetic information or information about a request for or the receipt of genetic services by an individual or a family member of such individual), (c), (d), (e), (f) and (g) of section 702 and section 714,” after “The requirements of this part”.

(g) Effective Date.—

(1) In general.—Except as provided in this section, this section and the amendments made by this section shall apply with respect to group health plans for plan years beginning after October 1, 2005.
(2) **Special rule for collective bargaining agreements.**—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, this section and the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) October 1, 2005.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement of the amendments made by this section shall not be treated as a termination of such collective bargaining agreement.
SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) Amendments Relating to the Group Market.—

(1) Prohibition of health insurance discrimination on the basis of protected genetic information or genetic services.—

(A) No enrollment restriction for genetic services.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: “(or information about a request for or the receipt of genetic services by an individual or a family member of such individual)’’.

(B) No discrimination in group rate based on protected genetic information.—

(i) In general.—Subpart 2 of part A of title XXVII of the Public Health Service (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:
"SEC. 2707. PROHIBITING DISCRIMINATION AGAINST
GROUPS ON THE BASIS OF PROTECTED GE-
NETIC INFORMATION.

“A group health plan, and a health insurance issuer
offering group health insurance coverage in connection
with a group health plan, shall not deny eligibility to a
group or adjust premium or contribution rates for a group
on the basis of protected genetic information concerning
an individual in the group (or information about a request
for or the receipt of genetic services by such individual
or family member of such individual).”.

(ii) CONFORMING AMENDMENTS.—

(I) Section 2702(b)(2)(A) of the
Public Health Service Act (42 U.S.C.
300gg–1(b)(2)(A)) is amended to read
as follows:

“(A) to restrict the amount that an em-
ployer may be charged for coverage under a
group health plan, except as provided in section
2707; or”.

(II) Section 2721(a) of the Pub-
lic Health Service Act (42 U.S.C.
300gg–21(a)) is amended by inserting
“(other than subsections (a)(1)(F),
(b) (with respect to cases relating to
genetic information or information
about a request or receipt of genetic
services by an individual or family
member of such individual), (e), (d),
(e), (f), or (g) of section 2702 and
section 2707)” after “subparts 1 and
3”.

(2) LIMITATIONS ON GENETIC TESTING AND ON
COLLECTION AND DISCLOSURE OF PROTECTED GE-
NETIC INFORMATION.—Section 2702 of the Public
Health Service Act (42 U.S.C. 300gg–1) is amended
by adding at the end the following:
“(c) GENETIC TESTING.—
“(1) LIMITATION ON REQUESTING OR REQUIR-
ING GENETIC TESTING.—A group health plan, or a
health insurance issuer offering health insurance
coverage in connection with a group health plan,
shall not request or require an individual or a family
member of such individual to undergo a genetic test.
“(2) RULE OF CONSTRUCTION.—Nothing in
this title shall be construed to limit the authority of
a health care professional, who is providing treat-
ment with respect to an individual and who is em-
ployed by a group health plan or a health insurance
issuer, to request that such individual or family
member of such individual undergo a genetic test.
Such a health care professional shall not require that such individual or family member undergo a genetic test.

“(3) CERTAIN TESTS.—The conducting of metabolic tests that are not intended to reveal protected genetic information shall not be considered a violation of the preceding provisions of this subsection regardless of the results of the tests. Test results that are protected genetic information shall be subject to the applicable provisions of this title.

“(d) COLLECTION OF PROTECTED GENETIC INFORMATION.—Except as provided in subsections (f) and (g), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, collect, or purchase protected genetic information concerning an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

“(e) DISCLOSURE OF PROTECTED GENETIC INFORMATION.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not disclose protected genetic information about an individual (or information
about a request for or the receipt of genetic services by
such individual or family member of such individual) to—

“(1) any entity that is a member of the same
controlled group as such issuer or plan sponsor of
such group health plan;

“(2) any other group health plan or health in-
surance issuer or any insurance agent, third party
administrator, or other person subject to regulation
under State insurance laws;

“(3) the Medical Information Bureau or any
other person that collects, compiles, publishes, or
otherwise disseminates insurance information;

“(4) the individual’s employer or any plan spon-
sor; or

“(5) any other person the Secretary may speci-
fy in regulations.

“(f) Information for Payment for Genetic
Services.—

“(1) In general.—With respect to payment
for genetic services conducted concerning an indi-
vidual or the coordination of benefits, a group health
plan, or a health insurance issuer offering group
health insurance coverage in connection with a group
health plan, may request that the individual provide
the plan or issuer with evidence that such services were performed.

“(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to—

“(A) permit a group health plan or health insurance issuer to request (or require) the results of the services referred to in such paragraph; or

“(B) require that a group health plan or health insurance issuer make payment for services described in such paragraph where the individual involved has refused to provide evidence of the performance of such services pursuant to a request by the plan or issuer in accordance with such paragraph.

“(g) INFORMATION FOR PAYMENT OF OTHER CLAIMS.—With respect to the payment of claims for benefits other than genetic services, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, may request that an individual provide protected genetic information so long as such information—

“(1) is used solely for the payment of a claim;

“(2) is limited to information that is directly related to and necessary for the payment of such claim
and the claim would otherwise be denied but for the protected genetic information; and

“(3) is used only by an individual (or individuals) within such plan or issuer who needs access to such information for purposes of payment of a claim.

“(h) Rules of Construction.—

“(1) Collection or disclosure authorized by individual.—The provisions of subsections (d) (regarding collection) and (e) shall not apply to an individual if the individual (or legal representative of the individual) provides prior, knowing, voluntary, and written authorization for the collection or disclosure of protected genetic information.

“(2) Disclosure for health care treatment.—Nothing in this section shall be construed to limit or restrict the disclosure of protected genetic information from a health care provider to another health care provider for the purpose of providing health care treatment to the individual involved.

“(i) Definitions.—In this section:

“(1) Controlled group.—The term ‘controlled group’ means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.
“(2) Group health plan, health insurance issuer.—The terms ‘group health plan’ and ‘health insurance issuer’ include a third party administrator or other person acting for or on behalf of such plan or issuer.”.

(3) Definitions.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following new paragraphs:

“(15) Family member.—The term ‘family member’ means with respect to an individual—

“(A) the spouse of the individual;

“(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

“(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

“(16) Genetic information.—The term ‘genetic information’ means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member of such individual (including information about a request for or the receipt of genetic services by such individual or family member of such individual).
“(17) Genetic Services.—The term ‘genetic services’ means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counselling.

“(18) Genetic Test.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

“(19) Protected Genetic Information.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘protected genetic information’ means—

“(i) information about an individual’s genetic tests;

“(ii) information about genetic tests of family members of the individual; and

“(iii) information about the occurrence of a disease or disorder in family members.”.

“(B) Limitations.—The term ‘protected genetic information’ shall not include—

“(i) information about the sex or age of the individual;
“(ii) information about chemical, blood, or urine analyses of the individual, unless these analyses are genetic tests; or
“(iii) information about physical exams of the individual, and other information that indicates the current health status of the individual.”.

(b) Amendment Relating to the Individual Market.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) is amended—

(1) by redesignating such subpart as subpart 2;

and

(2) by adding at the end the following:

“SEC. 2753. PROHIBITION OF HEALTH INSURANCE DISCRIMINATION AGAINST INDIVIDUALS ON THE BASIS OF PROTECTED GENETIC INFORMATION.

“(a) Ineligibility To Enroll.—A health insurance issuer offering health insurance coverage in the individual market shall not establish rules for eligibility to enroll in individual health insurance coverage that are based on protected genetic information concerning the individual (or information about a request for or the receipt of gen-
netic services by such individual or family member of such individual).

“(b) In Premium Rates.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium rates on the basis of protected genetic information concerning an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

“SEC. 2754. LIMITATIONS ON GENETIC TESTING AND ON COLLECTION AND DISCLOSURE OF PROTECTED GENETIC INFORMATION.

“(a) Genetic Testing.—

“(1) Limitation on Requesting or Requiring Genetic Testing.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

“(2) Rule of Construction.—Nothing in this title shall be construed to limit the authority of a health care professional, who is providing treatment with respect to an individual and who is employed by a group health plan or a health insurance issuer, to request that such individual or family
member of such individual undergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

“(3) Certain Tests.—The conducting of metabolic tests that are not intended to reveal protected genetic information shall not be considered a violation of the preceding provisions of this subsection regardless of the results of the tests. Test results that are protected genetic information shall be subject to the applicable provisions of this title.

“(b) Collection of Protected Genetic Information.—Except as provided in subsections (d) and (e), a health insurance issuer offering health insurance coverage in the individual market shall not request, require, collect, or purchase protected genetic information concerning an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

“(c) Disclosure of Protected Genetic Information.—A health insurance issuer offering health insurance coverage in the individual market shall not disclose protected genetic information about an individual (or information about a request for or the receipt of genetic
services by such individual or family member of such individual) to—

“(1) any entity that is a member of the same controlled group as such issuer or plan sponsor of such group health plan;

“(2) any other group health plan or health insurance issuer or any insurance agent, third party administrator, or other person subject to regulation under State insurance laws;

“(3) the Medical Information Bureau or any other person that collects, compiles, publishes, or otherwise disseminates insurance information;

“(4) the individual’s employer or any plan sponsor; or

“(5) any other person the Secretary may specify in regulations.

“(d) INFORMATION FOR PAYMENT FOR GENETIC SERVICES.—

“(1) IN GENERAL.—With respect to payment for genetic services conducted concerning an individual or the coordination of benefits, a health insurance issuer offering health insurance coverage in the individual market may request that the individual provide the plan or issuer with evidence that such services were performed.
“(2) Rule of Construction.—Nothing in paragraph (1) shall be construed to—

“(A) permit a health insurance issuer to request (or require) the results of the services referred to in such paragraph; or

“(B) require that a health insurance issuer make payment for services described in such paragraph where the individual involved has refused to provide evidence of the performance of such services pursuant to a request by the plan or issuer in accordance with such paragraph.

“(e) Information for Payment of Other Claims.—With respect to the payment of claims for benefits other than genetic services, a health insurance issuer offering health insurance coverage in the individual market may request that an individual provide protected genetic information so long as such information—

“(1) is used solely for the payment of a claim;

“(2) is limited to information that is directly related to and necessary for the payment of such claim and the claim would otherwise be denied but for the protected genetic information; and

“(3) is used only by an individual (or individuals) within such plan or issuer who needs access to
such information for purposes of payment of a
claim.

“(f) Rules of Construction.—

“(1) Collection or disclosure authorized
by individual.—The provisions of subsections (c)
(regarding collection) and (d) shall not apply to an
individual if the individual (or legal representative of
the individual) provides prior, knowing, voluntary,
and written authorization for the collection or disclo-
sure of protected genetic information.

“(2) Disclosure for health care treat-
ment.—Nothing in this section shall be construed to
limit or restrict the disclosure of protected genetic
information from a health care provider to another
health care provider for the purpose of providing
health care treatment to the individual involved.

“(g) Definitions.—In this section:

“(1) Controlled group.—The term ‘con-
trolled group’ means any group treated as a single
employer under subsection (b), (c), (m), or (o) of

“(2) Group health plan, health insur-
ance issuer.—The terms ‘group health plan’ and
‘health insurance issuer’ include a third party ad-
ministrator or other person acting for or on behalf of such plan or issuer.”.

(c) ENFORCEMENT.—

(1) GROUP PLANS.—Section 2722 of the Public Health Service Act (42 U.S.C. 300gg–22) is amend-
ed by adding at the end the following:

“(c) VIOLATION OF GENETIC DISCRIMINATION OR GENETIC DISCLOSURE PROVISIONS.—

“(1) IN GENERAL.—In any action under this section against any administrator of a group health plan, or health insurance issuer offering group health insurance coverage in connection with a group health plan (including any third party administrator or other person acting for or on behalf of such plan or issuer) alleging a violation of subsections (a)(1)(F), (b) (with respect to cases relating to genetic information or information about a request or receipt of genetic services by an individual or family member of such individual), (c), (d), (e), (f), or (g) of section 2702 and section 2707 the court may award any appropriate legal or equitable relief. Such relief may include a requirement for the payment of attorney’s fees and costs, including the costs of ex-
pert witnesses.
“(2) CIVIL PENALTY.—In any action described in paragraph (1), the Secretary may, to vindicate the public interest, assess a civil penalty against the defendant in an amount—

“(A) not exceeding $50,000 for a first violation, and

“(B) not exceeding $100,000 for any subsequent violation.

Any such relief awarded shall be paid into the general fund of the Treasury.”.

(2) INDIVIDUAL PLANS.—Section 2761 of the Public Health Service Act (42 U.S.C. 300gg–45) is amended by adding at the end the following:

“(c) VIOLATION OF GENETIC DISCRIMINATION OR GENETIC DISCLOSURE PROVISIONS.—

“(1) IN GENERAL.—In any action under this section against any health insurance issuer offering health insurance coverage in the individual market (including any other person acting for or on behalf of such issuer) alleging a violation of sections 2753 and 2754 the court in which the action is commenced may award any appropriate legal or equitable relief. Such relief may include a requirement for the payment of attorney’s fees and costs, including the costs of expert witnesses.
“(2) CIVIL PENALTY.—In any action described in paragraph (1), the Secretary may, to vindicate the public interest, assess a civil penalty against the defendant in an amount—

“(A) not exceeding $50,000 for a first violation, and

“(B) not exceeding $100,000 for any subsequent violation.

Any such relief awarded shall be paid into the general fund of the Treasury.”.

(d) PREEMPTION.—

(1) GROUP MARKET.—Section 2723 of the Public Health Service Act (42 U.S.C. 300gg–23) is amended—

(A) in subsection (a)(1), by inserting “or (e)” after “subsection (b)”;

(B) by adding at the end the following:

“(e) SPECIAL RULE IN CASE OF GENETIC INFORMATION.—With respect to group health insurance coverage offered by a health insurance issuer, the provisions of this part relating to genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) shall not be construed to supersede any provision of State law
which establishes, implements, or continues in effect a standard, requirement, or remedy that more completely—

“(1) protects the confidentiality of genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) or the privacy of an individual or a family member of the individual with respect to genetic information (including information about a request for or the receipt of genetic services by an individual or a family member of such individual) than does this part; or

“(2) prohibits discrimination on the basis of genetic information than does this part.”.

(2) INDIVIDUAL MARKET.—Section 2762 of the Public Health Service Act (42 U.S.C. 300gg–46) is amended—

(A) in subsection (a), by inserting “and except as provided in subsection (c),” after “Subject to subsection (b),”; and

(B) by adding at the end the following:

“(c) SPECIAL RULE IN CASE OF GENETIC INFORMATION.—With respect to individual health insurance coverage offered by a health insurance issuer, the provisions of this part (or part C insofar as it applies to this part) relating to genetic information (including information
about a request for or the receipt of genetic services by
an individual or a family member of such individual) shall
not be construed to supersede any provision of State law
(as defined in section 2723(d)) which establishes, imple-
ments, or continues in effect a standard, requirement, or
remedy that more completely—

“(1) protects the confidentiality of genetic in-
formation (including information about a request for
or the receipt of genetic services of an individual or
a family member of such individual) or the privacy
of an individual or a family member of the individual
with respect to genetic information (including infor-
mation about a request for or the receipt of genetic
services by an individual or a family member of such
individual) than does this part (or part C insofar as
it applies to this part); or

“(2) prohibits discrimination on the basis of ge-
netic information than does this part (or part C in-
sofar as it applies to this part).”.

(e) Elimination of Option of Non-Federal
Governmental Plans To Be Excepted From Re-
quirements Concerning Genetic Information.—
Section 2721(b)(2) of the Public Health Service Act (42
U.S. C. 300gg–21(b)(2)) is amended—
(1) in subparagraph (A), by striking “If the plan sponsor” and inserting “Except as provided in subparagraph (D), if the plan sponsor”; and

(2) by adding at the end the following:

“(D) Election not applicable to requirements concerning genetic information.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F), (e), (d), (e), (f), and (g) of section 2702 and section 2707, and the provisions of section 2702(b) to the extent that they apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).”.

(f) Amendment Concerning Supplemental Excepted Benefits.—

(1) Group market.—Section 2721(d)(3) of the Public Health Service Act (42 U.S.C. 300gg–23(d)(3)) is amended by inserting “, other than the requirements of subsections (a)(1)(F), (b) (in cases relating to genetic information or information about a request for or the receipt of genetic services by an individual or a family member of such individual)),
(c), (d), (e), (f) and (g) of section 2702 and section 2707,” after “The requirements of this part”.

(2) INDIVIDUAL MARKET.—Section 2763(b) of the Public Health Service Act (42 U.S.C. 300gg–47(b)) is amended—

(A) by striking “The requirements of this part” and inserting the following:

“(1) IN GENERAL.—Except as provided in paragraph (2), the requirements of this part”; and

(B) by adding at the end the following:

“(2) LIMITATION.—The requirements of sections 2753 and 2754 shall apply to excepted benefits described in section 2791(c)(4).”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to—

(A) group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning; and

(B) health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market, after October 1, 2005.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group
health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act); or

(B) October 1, 2005.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement of the amendments made by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 103. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.

(a) Prohibition of Health Insurance Discrimination on the Basis of Genetic Services or Protected Genetic Information.—
(1) No enrollment restriction for genetic services.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period “(or information about a request for or the receipt of genetic services by such individual or family member of such individual)”.

(2) No discrimination in group rate based on protected genetic information.—

(A) In general.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“SEC. 9813. PROHIBITING DISCRIMINATION AGAINST GROUPS ON THE BASIS OF PROTECTED GENETIC INFORMATION.

“A group health plan shall not deny eligibility to a group or adjust premium or contribution rates for a group on the basis of protected genetic information concerning an individual in the group (or information about a request for or the receipt of genetic services by such individual or family member of such individual).”.

(B) Conforming amendments.—

(i) Section 9802(b)(2)(A) of the Internal Revenue Code of 1986 is amended to read as follows:
“(A) to restrict the amount that an employer may be charged for coverage under a group health plan, except as provided in section 9813; or”.

(ii) Section 9831(a) of the Internal Revenue Code of 1986 is amended by inserting “(other than subsections (a)(1)(F), (b) (with respect to cases relating to genetic information or information about a request or receipt of genetic services by an individual or family member of such individual), (d), (e), (f), (g), or (h) of section 9802 or section 9813) after “chapter”.

(b) Limitations on Genetic Testing and on Collection and Disclosure of Protected Genetic Information.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(d) Genetic Testing.—

“(1) Limitation on Requesting or Requiring Genetic Testing.—A group health plan may not request or require an individual or a family member of such individual to undergo a genetic test.

“(2) Rule of Construction.—Nothing in this chapter shall be construed to limit the authority
of a health care professional, who is providing treatment with respect to an individual and who is employed by a group health plan, to request that such individual or family member of such individual undergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

“(3) C E R T A I N T E S T S .— The conducting of metabolic tests that are not intended to reveal protected genetic information shall not be considered a violation of the preceding provisions of this subsection regardless of the results of the tests. Test results that are protected genetic information shall be subject to the applicable provisions of this chapter.

“(e) C O L L E C T I O N O F P R O T E C T E D G E N E T I C I N F O R M A T I O N .— Except as provided in subsections (g) and (h), a group health plan shall not request, require, collect, or purchase protected genetic information concerning an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

“(f) D I S C L O S U R E O F P R O T E C T E D G E N E T I C I N F O R M A T I O N .— A group health plan shall not disclose protected genetic information about an individual (or information
about a request for or the receipt of genetic services by
such individual or family member of such individual) to—

“(1) any entity that is a member of the same
controlled group as such issuer or plan sponsor of
such group health plan;

“(2) any other group health plan or health in-
surance issuer or any insurance agent, third party
administrator, or other person subject to regulation
under State insurance laws;

“(3) the Medical Information Bureau or any
other person that collects, compiles, publishes, or
otherwise disseminates insurance information;

“(4) the individual’s employer or any plan spon-
sor; or

“(5) any other person the Secretary may speci-
fy in regulations.

“(g) INFORMATION FOR PAYMENT FOR GENETIC
SERVICES.—

“(1) IN GENERAL.—With respect to payment
for genetic services conducted concerning an indi-
vidual or the coordination of benefits, a group health
plan may request that the individual provide the
plan with evidence that such services were per-
formed.
“(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to—

“(A) permit a group health plan to request (or require) the results of the services referred to in such paragraph; or

“(B) require that a group health plan make payment for services described in such paragraph where the individual involved has refused to provide evidence of the performance of such services pursuant to a request by the plan in accordance with such paragraph.

“(h) INFORMATION FOR PAYMENT OF OTHER CLAIMS.—With respect to the payment of claims for benefits other than genetic services, a group health plan may request that an individual provide protected genetic information so long as such information—

“(1) is used solely for the payment of a claim;

“(2) is limited to information that is directly related to and necessary for the payment of such claim and the claim would otherwise be denied but for the protected genetic information; and

“(3) is used only by an individual (or individuals) within such plan or issuer who needs access to such information for purposes of payment of a claim.
“(i) Rules of Construction.—

“(1) Collection or disclosure authorized by individual.—The provisions of subsections (e) (regarding collection) and (f) shall not apply to an individual if the individual (or legal representative of, the individual) provides prior, knowing, voluntary, and written authorization for the collection or disclosure of protected genetic information.

“(2) Disclosure for health care treatment.—Nothing in this section shall be construed to limit or restrict the disclosure of protected genetic information from a health care provider to another health care provider for the purpose of providing health care treatment to the individual involved.

“(j) Definitions.—In this section:

“(1) Controlled group.—The term ‘controlled group’ means any group treated as a single employer under subsections (b), (c), (m), or (o) of section 414.

“(2) Group health plan, health insurance issuer.—The terms ‘group health plan’ and ‘health insurance issuer’ include a third party administrator or other person acting for or on behalf of such plan or issuer.”
(c) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(6) FAMILY MEMBER.—The term ‘family member’ means with respect to an individual—

“(A) the spouse of the individual;

“(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

“(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

“(7) GENETIC INFORMATION.—The term ‘genetic information’ means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member of such individual (including information about a request for or the receipt of genetic services by such individual or family member of such individual).

“(8) GENETIC SERVICES.—The term ‘genetic services’ means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.
“(9) Genetic test.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

“(10) Protected genetic information.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘protected genetic information’ means—

“(i) information about an individual’s genetic tests;

“(ii) information about genetic tests of family members of the individual; and

“(iii) information about the occurrence of a disease or disorder in family members.

“(B) Limitations.—The term ‘protected genetic information’ shall not include—

“(i) information about the sex or age of the individual;

“(ii) information about chemical, blood, or urine analyses of the individual, unless these analyses are genetic tests; or

“(iii) information about physical exams of the individual, and other informa-
tion that indicates the current health status of the individual.

(d) Effective Date.—

(1) In general.—Except as provided in this section, this section and the amendments made by this section shall apply with respect to group health plans for plan years beginning after October 1, 2005.

(2) Special rule for collective bargaining agreements.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, this section and the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) October 1, 2005.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining
agreement relating to the plan which amends the
plan solely to conform to any requirement of the
amendments made by this section shall not be treat-
ed as a termination of such collective bargaining
agreement.

SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SE-
CURITY ACT RELATING TO MEDI GAP.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—Section 1882(s)(2) of the
Social Security Act (42 U.S.C. 1395ss(s)(2)) is
amended by adding at the end the following:

“(E)(i) An issuer of a medicare supple-
mental policy shall not deny or condition the
issuance or effectiveness of the policy, and shall
not discriminate in the pricing of the policy (in-
cluding the adjustment of premium rates) of an
eligible individual on the basis of protected ge-
netic information concerning the individual (or
information about a request for, or the receipt
of, genetic services by such individual or family
member of such individual).

“(ii) For purposes of clause (i), the terms
‘family member’, ‘genetic services’, and ‘pro-
tected genetic information’ shall have the mean-
ings given such terms in subsection (v).”.

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(2) Effective date.—The amendment made by paragraph (1) shall apply with respect to a policy for policy years beginning after October 1, 2005.

(b) Limitations on Genetic Testing and on Collection and Disclosure of Protected Genetic Information.—

(1) In general.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

“(v) Limitations on Genetic Testing and on Collection and Disclosure of Protected Genetic Information.—

“(1) Genetic testing.—

“(A) Limitation on requesting or requiring genetic testing.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

“(B) Rule of construction.—Nothing in this title shall be construed to limit the authority of a health care professional, who is providing treatment with respect to an individual and who is employed by an issuer of a medicare supplemental policy, to request that such individual or family member of such individual un-
dergo a genetic test. Such a health care professional shall not require that such individual or family member undergo a genetic test.

“(C) Certain Tests.—The conducting of metabolic tests that are not intended to reveal protected genetic information shall not be considered a violation of the preceding provisions of this paragraph regardless of the results of the tests. Test results that are protected genetic information shall be subject to the applicable provisions of this subsection.

“(2) Collection of Protected Genetic Information.—Except as provided in paragraphs (4) and (5), an issuer of a medicare supplemental policy shall not request, require, collect, or purchase protected genetic information concerning an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual).

“(3) Disclosure of Protected Genetic Information.—An issuer of a medicare supplemental policy shall not disclose protected genetic information about an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual) to—
“(A) any entity that is a member of the same controlled group as such issuer;

“(B) any issuer of a medicare supplemental policy, group health plan or health insurance issuer, or any insurance agent, third party administrator, or other person subject to regulation under State insurance laws;

“(C) the Medical Information Bureau or any other person that collects, compiles, publishes, or otherwise disseminates insurance information;

“(D) the individual’s employer or any plan sponsor; or

“(E) any other person the Secretary may specify in regulations.

“(4) INFORMATION FOR PAYMENT FOR GENETIC SERVICES.—

“(A) IN GENERAL.—With respect to payment for genetic services conducted concerning an individual or the coordination of benefits, an issuer of a medicare supplemental policy may request that the individual provide the issuer with evidence that such services were performed.
“(B) Rule of construction.—Nothing in subparagraph (A) shall be construed to—

“(i) permit an issuer to request (or require) the results of the services referred to in such subparagraph; or

“(ii) require that an issuer make payment for services described in such subparagraph where the individual involved has refused to provide evidence of the performance of such services pursuant to a request by the issuer in accordance with such subparagraph.

“(5) Information for payment of other claims.—With respect to the payment of claims for benefits other than genetic services, an issuer of a medicare supplemental policy may request that an individual provide protected genetic information so long as such information—

“(A) is used solely for the payment of a claim;

“(B) is limited to information that is directly related to and necessary for the payment of such claim and the claim would otherwise be denied but for the protected genetic information; and
“(C) is used only by an individual (or individuals) within such issuer who needs access to such information for purposes of payment of a claim.

“(6) RULES OF CONSTRUCTION.—

“(A) Collection or disclosure authorized by individual.—The provisions of paragraphs (2) (regarding collection) and (3) shall not apply to an individual if the individual (or legal representative of the individual) provides prior, knowing, voluntary, and written authorization for the collection or disclosure of protected genetic information.

“(B) Disclosure for health care treatment.—Nothing in this section shall be construed to limit or restrict the disclosure of protected genetic information from a health care provider to another health care provider for the purpose of providing health care treatment to the individual involved.

“(7) Violation of genetic discrimination or genetic disclosure provisions.—

“(A) In general.—In any action under this subsection against any administrator of a medicare supplemental policy (including any
third party administrator or other person acting
for or on behalf of such policy) alleging a viola-
tion of this subsection, the court may award
any appropriate legal or equitable relief. Such
relief may include a requirement for the pay-
ment of attorney’s fees and costs, including the
costs of expert witnesses.

“(B) CIVIL PENALTY.—In any action de-
scribed in subparagraph (A), the Secretary
may, to vindicate the public interest, assess a
civil penalty against the defendant in an
amount—

“(i) not exceeding $50,000 for a first
violation, and

“(ii) not exceeding $100,000 for any
subsequent violation.

Any such relief awarded shall be paid into the
general fund of the Treasury.”.

“(8) SPECIAL RULE IN CASE OF GENETIC IN-
FORMATION.—This subsection (relating to genetic
information or information about a request for, or
the receipt of, genetic services by an individual or a
family member of such individual) shall not be con-
strued to supersede any provision of State law which
establishes, implements, or continues in effect a
standard, requirement, or remedy that more completely—

“(A) protects the confidentiality of genetic information (including information about a request for, or the receipt of, genetic services by an individual or a family member of such individual) or the privacy of an individual or a family member of the individual with respect to genetic information (including information about a request for, or the receipt of, genetic services by an individual or a family member of such individual) than does this subsection; or

“(B) prohibits discrimination on the basis of genetic information than does this subsection.

“(9) DEFINITIONS.—In this subsection:

“(A) CONTROLLED GROUP.—The term ‘controlled group’ means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

“(B) FAMILY MEMBER.—The term ‘family member’ means with respect to an individual—

“(i) the spouse of the individual;
“(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or
“(iii) any other individuals related by blood to the individual or to the spouse or child described in clause (i) or (ii).

“(C) GENETIC INFORMATION.—The term ‘genetic information’ means information about genes, gene products, or inherited characteristics that may derive from an individual or a family member of such individual (including information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

“(D) GENETIC SERVICES.—The term ‘genetic services’ means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

“(E) GENETIC TEST.—The term ‘genetic test’ means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.
“(F) Issuer of a Medicare supplemental policy.—The term ‘issuer of a medicare supplemental policy’ includes a third-party administrator or other person acting for or on behalf of such issuer.

“(G) Protected genetic information.—

“(i) In general.—Except as provided in clause (ii), the term ‘protected genetic information’ means—

“(I) information about an individual’s genetic tests;

“(II) information about genetic tests of family members of the individual; and

“(III) information about the occurrence of a disease or disorder in family members.”.

“(ii) Limitations.—The term ‘protected genetic information’ shall not include—

“(I) information about the sex or age of the individual;

“(II) information about chemical, blood, or urine analyses of the indi-
vidual, unless these analyses are genetic tests; or

“(III) information about physical exams of the individual, and other information that indicates the current health status of the individual.”.

(2) Conforming Amendment.—Section 1882(o) of the Social Security Act (42 U.S.C. 1395ss(o)) is amended by adding at the end the following:

“(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (v).”.

(3) Effective Date.—The amendments made by this subsection shall apply with respect to an issuer of a medicare supplemental policy for policy years beginning after October 1, 2005.

(c) Transition Provisions.—

(1) In General.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due
solely to failure to make such change until the date
specified in paragraph (4).

(2) NAIC STANDARDS.—If, not later than June
30, 2005, the National Association of Insurance
Commissioners (in this subsection referred to as the
“NAIC”) modifies its NAIC Model Regulation relat-
ing to section 1882 of the Social Security Act (re-
ferred to in such section as the 1991 NAIC Model
Regulation, as subsequently modified) to conform to
the amendments made by this section, such revised
regulation incorporating the modifications shall be
considered to be the applicable NAIC model regula-
tion (including the revised NAIC model regulation
and the 1991 NAIC Model Regulation) for the pur-
poses of such section.

(3) SECRETARY STANDARDS.—If the NAIC
does not make the modifications described in para-
graph (2) within the period specified in such para-
graph, the Secretary of Health and Human Services
shall, not later than October 1, 2005, make the
modifications described in such paragraph and such
revised regulation incorporating the modifications
shall be considered to be the appropriate regulation
for the purposes of such section.

(4) DATE SPECIFIED.—
(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) October 1, 2005.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 2005 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2005. For purposes of the previous sentence, in the case of a State that has a 2-year legislative
session, each year of such session shall be
deemed to be a separate regular session of the
State legislature.

TITLE II—PROHIBITION OF EMPLOYMENT DISCRIMINATION
ON THE BASIS OF PROTECTED GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:

(1) EMPLOYEE; EMPLOYER; EMPLOYMENT
AGENCY; LABOR ORGANIZATION; MEMBER.—The
terms “employee”, “employer”, “employment agen-
cy”, and “labor organization” have the meanings
given such terms in section 701 of the Civil Rights
Act of 1964 (42 U.S.C. 2000e), except that the
terms “employee” and “employer” shall also include
the meanings given such terms in section 717 of the
terms “employee” and “member” include an appli-
cant for employment and an applicant for member-
ship in a labor organization, respectively.

(2) FAMILY MEMBER.—The term “family mem-
ber” means with respect to an individual—

(A) the spouse of the individual;
(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

(C) any other individuals related by blood to the individual or to the spouse or child described in subparagraph (A) or (B).

(3) GENETIC MONITORING.—The term “genetic monitoring” means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(4) GENETIC SERVICES.—The term “genetic services” means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic and therapeutic purposes, and for genetic education and counseling.

(5) GENETIC TEST.—The term “genetic test” means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.
(6) **PROTECTED GENETIC INFORMATION.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “protected genetic information” means—

(i) information about an individual’s genetic tests;

(ii) information about genetic tests of family members of the individual; and

(iii) information about the occurrence of a disease or disorder in family members.

(B) **LIMITATIONS.**—The term “protected genetic information” shall not include—

(i) information about the sex or age of the individual;

(ii) information about chemical, blood, or urine analyses of the individual, unless these analyses are genetic tests; or

(iii) information about physical exams of the individual, and other information that indicates the current health status of the individual.

**SEC. 202. EMPLOYER PRACTICES.**

(a) **IN GENERAL.**—It shall be an unlawful employment practice for an employer (or a worker’s compensation insurance issuer acting on the employer’s behalf)—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment of the individual, because of protected genetic information with respect to the individual or information about a request for or the receipt of genetic services by such individual or family member of such individual;

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because of protected genetic information with respect to the individual, or information about a request for or the receipt of genetic services by such individual or family member of such individual; or

(3) to request, require, collect or purchase protected genetic information with respect to an individual or a family member of the individual except—

(A) where used for genetic monitoring of biological effects of toxic substances in the workplace, but only if—
(i) the employee has provided prior, knowing, voluntary, and written authorization;

(ii) the employee is informed of individual monitoring results;

(iii) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) or the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.); and

(iv) the employer, excluding any licensed health care professional that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

(B) where health or genetic services are offered by the employer and the employee provides prior, knowing, voluntary, and written authorization, and only the employee or family member of such employee receives the results of such services; or
(C) with respect to an applicant who has been given a conditional offer of employment or to an employee, an employer may request, require, collect or purchase the information described in section 201(6)(C), if—

(i) the request or requirement is consistent with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.); and

(ii)(I) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder;

(II) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position desired or held; and

(III) the information described in such section will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diag-
nose a current disease, or medical condition or disorder, except as otherwise permitted by this title.

(b) LIMITATION.—In the case of protected genetic information to which subparagraph (A), (B), or (C) of subsection (a)(3) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a).

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

It shall be an unlawful employment practice for an employment agency—

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of protected genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities or would limit the employment opportunities or otherwise adversely affect the status of the individual as an employee, because of protected genetic information with respect to the individual (or information about a re-
quest for or the receipt of genetic services by such individual or family member of such individual);

(3) to request, require, collect or purchase protected genetic information with respect to an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(4) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

SEC. 204. LABOR ORGANIZATION PRACTICES.

It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any individual because of protected genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or would limit the employment
opportunities or otherwise adversely affect the status of the individual as an employee, because of protected genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(3) to request, require, collect or purchase protected genetic information with respect to an individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(4) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

SEC. 205. TRAINING PROGRAMS.

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

(1) to discriminate against any individual because of protected genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual), in admission to, or employment in, any program es-
established to provide apprenticeship or other training
or retraining;

(2) to limit, segregate, or classify the members
of the organization, or fail or refuse to refer for em-
ployment any individual, in any way that would de-
prive or tend to deprive any individual of employ-
ment opportunities, or would limit the employment
opportunities or otherwise adversely affect the status
of the individual as an employee, because of pro-
tected genetic information with respect to the indi-
vidual (or information about a request for or receipt
of genetic services by such individual or family mem-
ber of such individual);

(3) to request, require, collect or purchase pro-
tected genetic information with respect to an indi-
vidual (or information about a request for or receipt
of genetic services by such individual or family mem-
ber of such individual); or

(4) to cause or attempt to cause an employer to
discriminate against an individual in violation of this
title.

SEC. 206. MAINTENANCE AND DISCLOSURE OF PROTECTED
GENETIC INFORMATION.

(a) MAINTENANCE OF PROTECTED GENETIC INFOR-
MATION.—If an employer (or a worker’s compensation in-
surance issuer acting on the employer’s behalf) possesses protected genetic information about an employee (or information about a request for or receipt of genetic services by such employee or family member of such employee), such information shall be treated and maintained as part of the employee’s confidential medical records.

(b) Disclosure of Protected Genetic Information.—An employer (or a worker’s compensation insurance issuer acting on the employer’s behalf) shall not disclose protected genetic information (or information about a request for or receipt of genetic services by such employee or family member of such employee) except—

(1) to the employee who is the subject of the information at the request of the employee;

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(3) under legal compulsion of a Federal court order, except that if the court order was secured without the knowledge of the individual to whom the information refers, the employer (or a worker’s compensation insurance issuer acting on the employer’s behalf) shall provide the individual with adequate
notice to challenge the court order unless the court order also imposes confidentiality requirements; and

(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation.

SEC. 207. CIVIL ACTION.

(a) In General.—One or more employees, members of a labor organization, or participants in training programs or a labor organization may bring an action in a Federal or State court of competent jurisdiction against an employer (or a worker’s compensation insurance issuer acting on the employer’s behalf), employment agency, labor organization, or joint labor-management committee or training program who commits a violation of this title.

(b) Enforcement by the Equal Employment Opportunity Commission.—

(1) In General.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, 710, and 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4, 2000e–5, 2000e–6, 2000e–8, 2000e–9, and 2000e–16) shall be the powers, remedies, and procedures provided to the Equal Employment Opportunity Commission to enforce this title. The Commission may promulgate regulations to implement these powers, remedies, and procedures.
(2) Exhaustion of remedies.—Nothing in this subsection shall be construed to require that an individual exhaust the administrative remedies available through the Equal Employment Opportunity Commission prior to commencing a civil action under this section, except that if an individual files a charge of discrimination with the Commission that alleges a violation of this title, the individual shall exhaust the administrative remedies available through the Commission prior to commencing a civil action under this section.

(c) Remedy.—A Federal or State court may award any appropriate legal or equitable relief under this section. Such relief may include a requirement for the payment of attorney’s fees and costs, including the cost of experts.

SEC. 208. EXCEPTIONS; RULES OF CONSTRUCTION.

(a) Treatment of certain tests.—The conducting of metabolic tests that are not intended to reveal protected genetic information shall not be considered a violation of 203(a)(3), 204(3), 205(3), or 206(3) regardless of the results of the tests. Test results that are protected genetic information shall be subject to the applicable provisions of this title.

(b) Rules of construction.—Nothing in this title shall be construed to—
(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act;

(2) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights accorded under this title;

(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains; or

(5) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 210. EFFECTIVE DATE.

This title shall become effective on October 1, 2005.
TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by the remainder of this Act, and the application of the remainder of this Act and the amendments made thereby to any person or circumstance shall not be affected by such holding.