

June 4, 2008

INSURANCE LAW ALERT

**New Federal Law Prohibits Genetic Discrimination
in Health Insurance and Benefit Plans**

The Genetic Information Nondiscrimination Act ("GINA" or "the Act") was signed into law by President Bush on May 21, 2008. GINA arose out of concerns that advances in and wider use of genetic testing could lead to new forms of discrimination. The Act prohibits discrimination based upon genetic information by health insurers and employer-sponsored health benefit plans. The GINA provisions targeted at insurers and health plans go into effect for plan years beginning one year after the date of enactment. Prior to the law's effective date insurers and group health plans should examine how they collect genetic information, identify which exemptions may apply to their collection practices, and analyze whether their current practices comply with the Act's confidentiality provisions with respect to any genetic information they currently maintain.

GINA amends several other federal laws, including ERISA, the Public Health Safety Act and the Internal Revenue Code. The purpose of the amendments is to prohibit group health plans and health insurers from adjusting premium or contribution amounts on the basis of genetic information. GINA calls for revision of the privacy regulation under HIPAA to ban the use or disclosure by a group health plan or health insurer of genetic information for underwriting purposes. The Act also prohibits group health plans and health insurers from requesting or requiring that an individual or his/her family members undergo genetic tests. In addition, the bill prohibits group health plans and health insurers from requesting, requiring or purchasing genetic information for underwriting purposes or in connection with the enrollment of an individual in the plan.

"Genetic information" is defined broadly in GINA. The term "genetic information" refers to information about an individual's genetic tests, genetic tests of the individual's family members, and the manifestation of a disease or disorder in family members. "Family members" include not only the individual's dependants, but also relatives of up to the fourth degree. "Genetic information" does not, however, include information about sex or age. Under very limited circumstances, group health plans may request, but may not require, a participant or beneficiary to undergo genetic testing.

The penalties for even inadvertent noncompliance with GINA can be substantial. HHS may impose monetary penalties on the plan sponsor or the insurance issuer of a group health plan in the event of noncompliance with GINA. Penalties may be avoided if the

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failure to comply was due to reasonable cause and not to willful neglect, and if such failure is corrected within 30 days of the date the plan or insurer first became aware or should have been aware of the failure. Penalties for inadvertent failures may be waived in part by HHS to the extent the penalty would be excessive to the company. In addition to risk of penalties, failure to comply with GINA may allow a plan participant or beneficiary to seek relief available under ERISA, such as enjoining a violation or other appropriate equitable relief.

GINA does not preempt other state and federal laws that may provide equal or greater protection for individuals in the area of genetic information discrimination. Oregon already has laws that provide protection for genetic information in some instances. The regulations that will be promulgated by the EEOC and other federal agencies will hopefully be of assistance in determining additional ways in which health plans and health insurers must modify their activities to be compliant with GINA. We will provide an update on GINA when the regulations are issued.

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Our firm's Insurance Law Alerts are intended to provide general information regarding recent changes and developments in the insurance law area. These publications do not constitute legal advice, and the reader should consult legal counsel to determine how this information may apply to any specific situation.

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