

# ACP Calls for Law Against Genetic Discrimination

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Federal protections against genetic discrimination by insurers and employers are needed to fill in the gaps left by state legislation, according to a policy paper released by the American College of Physicians.

Only 25% of Americans trust their health insurer to not misuse their genetic information, and only 17% trust their employer, according to a 2007 survey conducted by the Johns Hopkins Genetics and Public Policy Center, Washington, cited in the paper.

This fear that genetic information will be used to deny insurance or employment might have detrimental effects, such as patients not sharing their complete medical history with their physicians, deciding to forgo genetic testing that could improve health decisions, and being reluctant to participate in research studies.

Under the provisions of HIPAA, genetic information is "protected health information" and insurers are prohibited from considering a genetic risk factor as a pre-existing condition. But HIPAA does not prohibit insurers from charging a group higher premiums if one member has a known genetic risk factor, does not prohibit insurers from requiring genetic tests, and does not limit disclosure of genetic information.

State protections also are incomplete, according to the ACP, with 35 states having laws against genetic discrimination in employment and 47 states having laws against such discrimination in health insurance.

To remedy the gaps, the ACP advocates federal legislation that expressly prohibits insurers from using genetic information to deny or limit health coverage and from charging higher premiums based on ge-

netic test results, prohibits employers from using genetic information in employment decisions, and prohibits insurers and employers from requiring genetic testing and from collecting and/or disclosing genetic information.

The organization also recommends that Congress include ERISA (Employee Retirement Income Security Act) health plans in such legislation; under ERISA, self-insured companies are exempt from state regulations.

"While they're not quite there, Congress does continue to move closer to passing federal legislation that protects the use of genetic information in employment and insurance coverage decisions," Dr. David C. Dale, president of the ACP, said in a statement.

"This monograph is important for the ongoing discussion," he said.

The current legislation before Congress, the Genetic Information Nondiscrimination Act (S. 358/H.R. 493), or GINA, includes many of the protections called for by the ACP, with the exception of the ERISA recommendation.

The bill passed in the House in April 2007, and a Senate vote is pending. President George W. Bush has said he would sign the bill.

If enacted, GINA would greatly expand protection against genetic discrimination by insurers and employers in the United States.

The Society for General Internal Medicine, the American Academy of Family Physicians, and the American Academy of Pediatrics are among the groups that support GINA. ■

The policy paper, "Establishing Federal Protections Against Genetic Discrimination," is available on ACP's Web site at [www.acponline.org/advocacy/where\\_we\\_stand/policy/gen\\_dis.pdf](http://www.acponline.org/advocacy/where_we_stand/policy/gen_dis.pdf).

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## POLICY & PRACTICE

### Judge Rules for Journals

A federal judge in Chicago last month ruled that JAMA and the Archives of Internal Medicine do not need to release documents related to the confidential peer review process for studies on cyclooxygenase-2 inhibitors. Attorneys for drugmaker Pfizer Inc. had issued subpoenas last year to obtain all documents relating to the decision to accept or reject manuscripts, copies of rejected manuscripts, the identities of peer reviewers and their comments, and editors' comments regarding manuscripts, peer review, and publication decisions. But U.S. District Court Judge Arlander Keys of the Northern District of Illinois ruled that the journals can keep the documents confidential. "It is not unreasonable to believe that compelling production of peer review documents would compromise the process," Judge Keys wrote. Dr. Catherine DeAngelis, JAMA's editor-in-chief, and JAMA's editorial counsel, Joseph Thornton, wrote in an online editorial that the ruling supports the confidential peer review process. "For months, JAMA and [Archives of Internal Medicine] consistently argued that the sanctity of the confidential peer review process should not be violated," they wrote. "JAMA and our Archives journals have historically and deliberately kept unpublished manuscripts and peer review comments confidential. This promise to reviewers and authors allows the peer review process to work in an unrestrained environment." A federal judge in Boston has not yet ruled on a similar request by Pfizer to force the release of documents from the New England Journal of Medicine.

### Primary Care Survey Planned

The Physicians' Foundation for Health Systems Excellence is seeking to gain insight into the state of primary care through what it says is one of the most ambitious physician surveys ever attempted. Beginning next month, the group will send more than 300,000 surveys to primary care physicians and selected specialists—virtually every active primary care physician nationwide—and to specialists in small, independent practices, according to the group. The survey will ask about the state of primary care practices, and whether or not physicians can maintain patient care services in light of current regulatory and financial burdens. "If the survey indicates that medical practice itself is in jeopardy, that urgent message needs to be heard by policy makers and the public," said Dr. Walter Ray, vice president of the Physicians' Foundation and former president of the Medical Association of Georgia, in a statement. The group has partnered with national physician search and consulting firm Merritt, Hawkins & Associates to develop and mail the survey.

### FDA to Establish China Offices

In the first step to establishing offices in China, the Food and Drug Administration has received approval from the

State Department to create eight full-time permanent FDA positions at U.S. diplomatic posts there, pending authorization from the Chinese government. In addition, the FDA said, it will be hiring five Chinese nationals to work with the new FDA staff at the U.S. Embassy in Beijing and consulates in Shanghai and Guangzhou. The offices will allow greater access for inspections and greater interactions with manufacturers to help ensure that products that are shipped to the United States meet U.S. standards for safety and manufacturing quality, the FDA said.

### Well-Insured Sent to ASCs

Physicians at physician-owned ambulatory surgery centers are more likely than other providers are to refer well-insured patients to their facilities, while routing Medicaid patients to hospital outpatient clinics, a study in Health Affairs found. The study looked at ASCs in the Philadelphia and Pittsburgh metropolitan areas in 2003. Procedures studied ranged from the removal of benign skin lesions to procedures dealing with hand and wrist disorders such as carpal tunnel syndrome. For most ASCs, the largest common diagnostic groupings were cataract surgery and gastrointestinal disorders and testing, including colonoscopy and endoscopy. The study reviewed the referral patterns of the physicians who accounted for the top 50% of patient referrals to physician-owned ASCs and found that these physicians were significantly more likely to refer Medicaid patients to hospital outpatient departments. The study authors noted that some lawmakers are concerned that continued growth of ASCs will "contribute to a further unraveling of an already fragile safety net. The worry is that physician-owned facilities will siphon off profit centers that have traditionally cross-subsidized care for uninsured and Medicaid patients, as well as unprofitable services such as burn treatment. The findings from this paper are consistent with that fear."

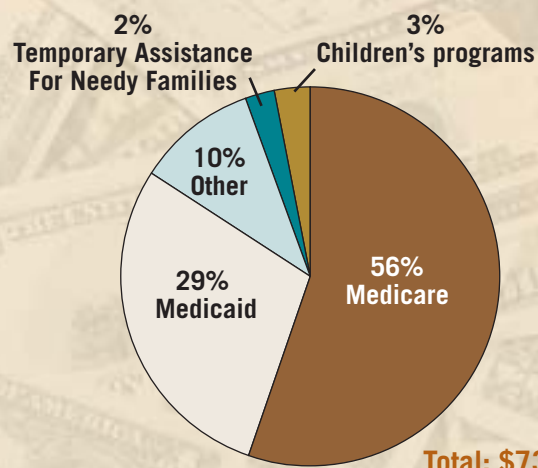
### Lottery to Determine Coverage

More than 91,000 Oregonians have signed up for a lottery to determine which uninsured state residents will receive coverage under the Oregon Health Plan, which covers Medicaid-eligible patients and others in the state who can't get coverage, the state's Department of Human Services said. Of the 160,000 uninsured Oregon residents, about 130,000 qualify for the Oregon Health Plan, but the state can afford to cover only up to 24,000 members. Right now, the plan has 17,000 members, and state officials decided that the fairest way to determine who else would receive coverage would be to hold a lottery. Only about 3,000 of the initial 91,000 lottery entrants will receive applications for the health plan, and the state will distribute more applications in batches of 3,000 until program enrollment reaches 24,000, according to the state DHS.

—Jane Anderson

## DATA WATCH

### Proposed FY 2009 Health and Human Services Budget



Source: Health Resources and Services Administration