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April 27, 2009

Senator Jennifer Veiga  
Chairwoman, Business, Labor and Technology  
Colorado Senate  
200 E. Colfax  
Denver, CO 80203

***Re: Colorado H.B. 1338, Concerning Modifications to State Insurance Laws to Comply with Recently Enacted Federal Laws***

Dear Senator Veiga:

I am writing today on behalf of America's Health Insurance Plans (AHIP) to comment on Colorado H.B. 1338, legislation that modifies state law with respect to several new federal requirements, including the federal Genetic Information Nondiscrimination Act (GINA). AHIP is the national trade association representing approximately 1,300 health insurance plans that provide coverage to more than 200 million Americans. Our members offer a broad range of health insurance products in the commercial marketplace, including Medicare supplement, and also have demonstrated a strong commitment to participation in public programs.

AHIP member companies appreciate the efforts of the Colorado legislature to revise its statutes regarding the use of genetic information consistent with the *2008 NAIC Medicare Supplement Insurance Minimum Standards Model Regulation* (NAIC Model Regulation), which was updated to conform to the federal statutory changes made by the Genetic Information Nondiscrimination Act (GINA). To facilitate the implementation of these important changes, we encourage states to adopt uniform standards that follow the NAIC Model Regulation.

Our review of the genetic information and testing provisions, outlined under Section 1 of H.B. 1338, identified some deviations from the NAIC Model Regulation and the underlying federal law. We respectfully highlight these discrepancies below and offer amendments on these issues with our suggested additions highlighted underlined text and our recommended deletions noted in strikethrough text.

**1. Definition of Entity -- Section 10-13-1104.7(2)(a)**

H.B. 1338's stated intent is to conform state law to the requirements outlined in the GINA legislation and three other federal laws. We respectfully note that GINA does not apply to disability income or long-term care insurance. Long-term care and disability income insurance are distinctly different from health insurance. We therefore respectfully request that the definition in Sections 10-3-1104.7(2)(a) be amended reflect the intent of the federal statute and the NAIC model regulation as follows:

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(2) For purposes of this section:

(a) "Entity" means any sickness and accident insurance company, health maintenance organization, nonprofit hospital, medical-surgical and health service corporation, or other entity that provides health care insurance, ~~group disability insurance~~, MEDICARE SUPPLEMENT INSURANCE, ~~or long-term care insurance coverage~~ and is subject to the jurisdiction of the commissioner of insurance

## 2. Definition of Genetic Testing -- Section 10-3-1104.7(2)(e)(II)

Our review of the proposed definition of genetic testing identified the omission of language from the NAIC Model Regulation in the exclusion captured in Section 10-3-1104.7(2)(e)(II). To avoid the potential for confusion, we respectfully request that the definition be updated to mirror the NAIC Model Regulation and the underlying federal statute as follows:

(II) "GENETIC TEST" DOES NOT INCLUDE an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or AN ANALYSIS OF PROTEINS OR METABOLITES THAT IS DIRECTLY RELATED TO A MANIFESTED DISEASE, DISORDER, OR PATHOLOGICAL CONDITION THAT COULD REASONABLY BE DETECTED BY A HEALTH CARE PROFESSIONAL WITH APPROPRIATE TRAINING AND EXPERTISE IN THE FIELD OF MEDICINE INVOLVED.

## 3. Genetic Test Results -- Section 10-3-1104.7(3)(c)

The proposed new genetic testing prohibition outlined in Section 10-3-1104.7(3)(c) does not allow a Medicare supplement carrier to obtain and use the results of a genetic test when making a determination regarding payment. We respectfully note that both the NAIC Model Regulation and the underlying federal law (GINA) incorporate language that allows for the use of this information for payment decisions. We therefore request an amendment to H.B. 1338 to include the following provision as new subsection under 10-3-1104.7(3)(c):

(c) (I) AN ENTITY SHALL NOT REQUEST OR REQUIRE AN INDIVIDUAL OR FAMILY MEMBER OF THE INDIVIDUAL TO UNDERGO A GENETIC TEST UNLESS OTHERWISE AUTHORIZED BY APPLICABLE STATE OR FEDERAL LAW.

(II) The provisions of paragraph (c)(I) of this subsection (3) shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of

1996, as may be revised from time to time) and consistent with the provisions of paragraphs (a) and (b) of this subsection (3).

**4. Genetic Information -- Section 10-3-1104.7(3)(a),(b)**

We further note that H.B. 1338 omits language from Section 24(I) of the NAIC Model Regulation and Section 104 of GINA regarding situations where the Medicare supplement issuers obtain genetic information incidental to requesting other information concerning an individual. Specifically, this important provision explicitly states that these types of situations are not a violation of the underlying prohibitions on requesting, requiring, or purchasing genetic information. To ensure conformity with the underlying federal requirements and to promote uniformity, we suggest amending Section 10-3-1104.7(3)(b) to incorporate a new subsection as noted below. In addition, and for the reasons outlined above, we request that the references to disability income and long-term care insurance be deleted from Section 10-3-1104.7(3)(b). What follows are our suggested amendments to this provision.

(b) (I) Any entity that receives GENETIC information derived from genetic testing may not seek, use, or keep the information for any nontherapeutic purpose or for any underwriting purpose connected with the provision of health care insurance, group disability insurance, or MEDICARE SUPPLEMENT INSURANCE, or long-term care insurance coverage.

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

AHIP applauds the time and commitment of the Colorado legislature on this important legislation. We appreciate the opportunity to provide feedback on this proposal and thank you for taking our comments into consideration.

If you have any questions, please do not hesitate to contact me at [dbricker@ahip.org](mailto:dbricker@ahip.org) or 202-861-6378.

Sincerely,



Dianne Bricker  
Regional Director

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cc: Representative Edward Casso  
Senator Bob Bacon  
Senator Rollie Heath  
Senator Joyce Foster  
Senator Ted Harvey  
Senator Shawn Mitchell  
Senator Mark Scheffel  
Senator Lois Tochtrop