

Summary of 2020 Legislative Trends Specific to Risk Classification Topics

Genetic Testing

- Legislation continues to capture the attention of the public and lawmakers and is gaining momentum in the states.
- Proposed legislation is driven by the low cost and growing prevalence of at-home genetic tests, the growing use of clinical genetic tests in medicine, and consumer privacy concerns.
- Legislation introduced in Florida, Maryland, Michigan, Utah, Vermont, and Washington.
- The most problematic legislation continues to be in Florida. HB 1189 prohibits life insurers from using — in any form, even if it is part of the medical record — the results of genetic test results when underwriting a policy. SB 1564 prohibits use of genetic information except when tied to a diagnosis.
- In many states, ACLI has been successful in shifting the focus of these bills from a complete ban to:
 - consumer transparency and disclosure regarding the data collected about them and its use, and
 - lawmaker and policymaker education regarding underwriting as a holistic evaluation of an applicant’s mortality and morbidity risk.

Naloxone/Opioid Antagonists

- The opioid epidemic is impacting life insurance. According to the Substance Abuse and Mental Health Services Administration, most people who reported prescription opioid misuse started in their 20s; this is one of the reasons that the opioid-related death rate for adults between the ages of 25 and 54 is the highest.
- Many states have expanded access to Naloxone through standing orders to make it available without a prescription.
- ACLI advocacy efforts have improved language in proposed legislation by prohibiting insurers from taking adverse underwriting action ***solely*** on the basis of a Naloxone prescription.
- Legislation introduced in Illinois and New York prohibit unfair discrimination based solely and without actuarial justification on a prescription for Naloxone.
- Colorado Bulletin B-4-103 - Insurers’ Consideration of Naloxone Prescriptions in the Underwriting Process, provides underwriting guidance to insurers in their use of applicants’ prescription drug history.

Organ Donor Protection Acts

- ACLI worked with the National Kidney Foundation to reach a consensus on the federal Living Donor Protection Act, S. 511 and H.R. 1224, which promotes organ donation and protects living organ donors from discrimination.

- Modifications proposed by ACLI and agreed to by the National Kidney Foundation ensures commonly used insurance underwriting procedures are maintained for applicants and policy holders, while protecting living organ donors from discrimination in the issuance, pricing, and benefits for life, disability and long-term care insurance.
- The federal legislation closely mirrors language in living donor bills enacted by various state legislatures during the past two years. In 2020, legislation has been introduced in Missouri, Nebraska, Washington.

Truvada/PrEP

- Legislation has been introduced in California, Washington DC, and Maine, prohibiting companies from factoring the use of PrEP into underwriting decisions.
- California SB 961 prohibits a life or disability income insurer from declining a life or disability income insurance application or enrollment request on the basis of a positive HIV test, regardless of when or at whose direction the test was performed.
- ACLI continues its advocacy efforts through education, highlighting that
 - life insurers rely on a wide range of factors in the underwriting process
 - life insurers are competitive, applying the advances in medicine and science to expand coverage in America as much as possible, and
 - people with HIV can obtain coverage.

Death with Dignity

- These laws allow qualified terminally ill patients to receive prescription medication to end their lives in a humane manner.
- Most bills of this nature prohibit life insurers from considering a terminally ill patient's request (or rescinding of a request) to end his or her life when issuing or pricing life insurance or annuity policies. Some explicitly require that the cause of death on a patient's birth certificate is listed as the disease that caused the terminal illness, not suicide.
- Legislation introduced in Arizona, Georgia, Indiana, Kentucky, Pennsylvania, Rhode Island, Virginia, Washington
- Legislation proposed in Washington would require a study to review potential barriers to death with dignity act
- ACLI is generally neutral on death with dignity bills unless there is language in the bill that would specifically prohibit insurers from performing their normal underwriting or claims review process.

Gender/Gender Identity

- Some people avoid identifying themselves as male or female. In some cases, people prefer to describe themselves as being "nonbinary."
- Legislation introduced in New Jersey, A 2056, prohibits the discrimination against any person because of race, creed, color, national origin, ancestry, or sex of an individual in the issuance, withholding, extension or renewal of any disability or accident policy or

annuity. SB 1125 prohibits unfair discrimination in issuing or rating life insurance policies based on transgender status or certain gender identity information.

- Legislation introduced in Missouri, New Hampshire, and New York applies to employers/employment decisions.

Big Data

- Big data is changing the way insurers do business. The type, amount, and access to big data is driving increased scrutiny on the way life insurers underwrite. The heightened attention can be tied to:
 - A heightened focus on consumer privacy, especially around data,
 - A heightened sensitivity to anything that might be perceived as unfair discrimination, and
 - A growing theme that people should not be treated differently by insurers due to pre-existing conditions.
- In 2019, New York DFS issued Insurance Circular Letter to all insurers authorized to write life insurance in the state. The letter provides insurers with guidance regarding the use of external consumer data and information sources in underwriting for life insurance.
- ACLI staff has identified members primary areas of concern with the bulletin and have developed an alternative bulletin on the use of external data.
- A recently formed NAIC Accelerated Underwriting Working Group is charged with considering the use of external data in life insurance underwriting, and if necessary, draft guidance for the states.
- ACLI formed an ACLI Big Data Task Force last summer, focusing on tracking and responding the new NAIC Accelerated Underwriting Working Group.

Biometric Information

- Biometric bills have been introduced in Arizona, Illinois, Maryland, Missouri, New Jersey and South Carolina. Proposed legislation does not appear to impact insurers from a risk classification perspective.
- With the exception of South Carolina, proposed legislation appears to be modeled after the Biometric Information Privacy Act (BIPA) adopted in Illinois in 2008 (740 ILCS/14). The Illinois BIPA includes a broad exemption for financial institutions subject to Gramm-Leach-Bliley.
- Proposals do not directly impact ACLI members including that, in general, insurers are not collecting biometric information, or if they are collecting the information it is from third parties. In addition, the exceptions for use, and the fact that insurers obtain consent for use for information that might fall under BIPA, would shield members.
- South Carolina HB 4812 varies significantly from traditional BIPA proposals and resembles California Consumer Privacy Act by providing consumer rights to their biometric information. The proposal would require a business that collects a consumer's biometric information to inform the consumer of the purpose for collection and obtain consent. The legislation would grant a consumer the right to

request that a business delete their biometric information once the initial purpose of the collection has been satisfied by the business. It also requires a business collecting biometric information to notify all consumers of a breach of security of business data within seventy-two (72) hours of the discovery. The legislation has no GLBA/HIPAA exemption and permits a private cause of action. ACLI will oppose the legislation and will monitor other states for similar legislative proposals.

- ACLI will continue to monitor BIPA proposals and seek GLBA/HIPAA exemptions.