

**Title 3. Commerce, Community, and Economic Development.**

**Chapter 26. Trade Practices.**

3 AAC 26 is amended by adding new sections to read:

**Article 9. Use of Senior-specific Certifications and Professional Designations.**

**Section**

820. Applicability

825. Prohibited uses of senior-specific certifications and professional designations

**3 AAC 26.820. Applicability.** The provisions of 3 AAC 26.820 - 3 AAC 26.825 apply to a solicitation for, the sale or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer. (Eff. 6/28/2009, Register 190)

**Authority:** AS 21.06.090                      AS 21.36.030                      AS 21.36.150  
AS 21.36.020                      AS 21.36.040

**3 AAC 26.825. Prohibited uses of senior-specific certifications and professional designations.** (a) An insurance producer engages in an unfair or deceptive act or practice if the insurance producer uses a senior-specific certification or professional designation in a manner that could mislead a purchaser or prospective purchaser to believe that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale, or purchase of a life insurance or annuity product, or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly by

- (1) publications or writings;
- (2) oral statements or representation; or
- (3) issuing analyses or reports related to a life insurance or annuity product.

(b) Uses of a senior-specific certification or professional designation that are prohibited under (a) of this section include use of

- (1) a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use that certification or designation;
- (2) a nonexistent or self-conferred certification or professional designation;
- (3) a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the insurance producer using the certification or professional designation does not have; or
- (4) a certification or professional designation that was obtained from a certifying or designating organization that
  - (A) is primarily engaged in the business of instruction in sales or marketing;
  - (B) does not have reasonable standards or procedures for assuring the competency of the recipients of the organization's certificates or designations;
  - (C) does not have reasonable standards or procedures for monitoring and disciplining the holders of the organization's certificates or designations for improper or unethical conduct; or
  - (D) does not have reasonable continuing education requirements for the holders of the organization's certificates or designations in order to maintain the certificate or designation.

(c) A certifying or designating organization is not disqualified solely for purposes of (b)(4) of this section if the certification or designation issued by the organization does not primarily apply to sales or marketing and if the organization or the certification in question has been accredited by

- (1) the American National Standards Institute;
- (2) the National Commission for Certifying Agencies; or
- (3) an accrediting agency that the United States Secretary of Education recognizes under 34 C.F.R. Part 602.

(d) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation that could mislead a person to believe that an insurance producer has a special certification or training in advising or servicing seniors, the director will, in addition to other factors, consider

- (1) whether the insurance producer uses one or more words such as “senior,” “retirement,” “elder,” or similar words combined with one or more words such as “certified,” “registered,” “chartered,” “advisor,” “specialist,” “consultant,” “planner,” or similar words, in the name of the certification or professional designation; and

- (2) the manner in which those words are combined.

(e) Unless it is used in a manner that would confuse or mislead a reasonable consumer, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is allowable and is not considered a certification or professional designation, if the job title indicates

- (1) seniority or standing within the organization; or
- (2) an individual’s area of specialization within the organization.

(f) For purposes of this section, “financial services regulatory agency” includes an agency that regulates

- (1) insurers;
- (2) insurance producers;
- (3) broker-dealers;
- (4) investment advisers as defined in 15 U.S.C. 80a-2(a)(20) (sec. 2(a)(20) of the

Investment Company Act of 1940); or

(5) investment companies as defined in 15 U.S.C. 80a-3 (sec. 3 of the Investment Company Act of 1940). (Eff. 6/28/2009, Register 190)

**Authority:** AS 21.06.090                      AS 21.36.030                      AS 21.36.150  
AS 21.36.020                      AS 21.36.040

## **Chapter 28. Life, Health, Variable, and Related Insurance.**

### **Article 5. Health Insurance Marketed as Medicare Supplements.**

3 AAC 28 is amended by adding a new section to read:

**3 AAC 28.508. Prohibition against use of genetic information and requests for genetic testing.** (a) An issuer may not, based on an individual’s genetic information,

(1) deny or condition the issuance or effectiveness of a medicare supplement policy or certificate; or

(2) exclude benefits under a medicare supplement policy or certificate for a preexisting condition.

(b) An issuer may not, based on an individual’s genetic information, discriminate in the

pricing of a medicare supplement policy or certificate, including the adjustment of premium rates.

(c) Nothing in (a) and (b) of this section limits the ability of an issuer, if permitted by law, to

(1) based on the manifestation of a disease or disorder of an insured or applicant

(A) deny or condition the issuance or effectiveness of a medicare supplement policy or certificate; or

(B) increase of the premium for a group; or

(2) increase the premium for a policy based on the manifestation of a disease or disorder of an individual who is covered under the policy; however, the issuer may not also use the manifestation of a disease or disorder of one individual as genetic information about other group members and to further increase the premium for the group.

(d) Except as provided in (f) of this section, an issuer may not request or require an individual or a family member of an individual to undergo a genetic test.

(e) Nothing in (d) of this section prohibits an issuer from obtaining and using the results of a genetic test in making a determination regarding payment consistent with (a) of this section. An issuer may request only the minimum amount of information necessary in order to make a determination regarding payment.

(f) An issuer may request, but not require, that an individual or a family member of an individual undergo a genetic test if

(1) the request is made according to research that complies with 45 C.F.R. Part 46 and AS 18.13;

(2) the issuer clearly indicates to each individual or, in the case of a minor child, the legal guardian of the child to whom the request is made that

(A) compliance with the request is voluntary; and

(B) noncompliance will have no effect on enrollment status or premium or contribution amounts;

(3) genetic information collected or acquired under this subsection is not used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate;

(4) the issuer notifies the secretary in writing that the issuer is conducting activities according to the exception provided under this subsection and includes a description of the activities the issuer is conducting; and

(5) the issuer complies with all other federal law applicable to activities conducted under this subsection.

(g) An issuer may not request, require, or purchase genetic information for underwriting purposes.

(h) An issuer may not request, require, or purchase genetic information with respect to an individual before the individual's enrollment under the policy in connection with the enrollment.

(i) If an issuer obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase will not be considered a violation of (h) of this section if the request, requirement, or purchase is not in violation of (g) of this section.

(j) In this section,

(1) “issuer,” in addition to having the meaning given in 3 AAC 28.510, includes a third-party administrator or other person acting for or on behalf of the issuer with respect to a medicare supplement policy or certificate;

(2) “family member” means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual;

(3) “genetic information”

(A) means, with respect to an individual, information about the individual’s genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual;

(B) includes

(i) with respect to an individual, any request for or receipt of, genetic services, or participation in clinical research that includes genetic services, by the individual or any family member of the individual; and

(ii) with respect to an individual or family member of an individual who is a pregnant woman, genetic information of a fetus carried by the pregnant woman, or with respect to an individual or family member using reproductive technology, genetic information of any embryo legally held by an individual or family member;

(C) does not include information about the sex or age of any individual;

(4) “genetic services” means

(A) a genetic test;

(B) genetic counseling, including obtaining, interpreting, or assessing genetic information; or

(C) genetic education;

(5) “genetic test” means an analysis of human deoxyribonucleic acid (DNA), ribonucleic acid (RNA), chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes; “genetic test” does not include

(A) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

(B) 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;

(6) “underwriting purposes” means

(A) rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy;

(B) the computation of premium or contribution amounts under the policy;

(C) the application of any preexisting condition exclusion under the policy; and

(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits. (Eff. 6/28/2009, Register 190)

Authority: AS 21.06.090 AS 21.42.130 AS 21.89.060