COMMENTARY

Anti-Selection is Only the Beginning

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Abstract: This commentary proposes the need for greater normative debate about when, if ever, it is appropriate for insurers to access genetic information of insureds to combat anti-selection.

Much of insurance regulation is framed as a balance of two competing interests. Insurers want as much information as possible about prospective clients, so they can avoid pay outs, earn profits, and compete for business with low premiums. They argue that they require this knowledge to combat "anti-selection," or the outsized enrollment of high-risk individuals who know their risk when insurers do not.[1] Insureds, especially high-risk ones, fear that risk-rating will oust them from the comforts of community pooling, leaving them to bear their risks alone. The fear of losing insurance could lead people to forgo potentially valuable health-related information. In the context of genetics, people may avoid taking genetic tests or participating in genetic research as a result. Some countries have enacted legislation that bars insurers from considering genetic information under certain circumstances to ease anxieties about genetic discrimination.[2] However, denying insurers access to actuarially sound information—even for the greater good — could potentially lead to anti-selection, adversely impacting insurance markets.

How are regulators to respond to these conflicting concerns? The authors of "Anti-Selection & Genetic Testing in Insurance: An Interdisciplinary Perspective" make an important contribution to the literature by suggesting oft-cited concerns by insurers about anti-selection may be overblown.

To start, people may have internal barriers to opportunistic insurance purchasing.[3] The authors rightly point out that when a person receives a positive genetic test, her first impulse may not be to run out and purchase the optimal amount of insurance coverage. Genetic risk is difficult to understand and people with low health literacy may also have low financial literacy, which could lead them to forgo additional insurance even when it would benefit them.

Even sophisticated parties might not know just how much insurance to buy following a genetic test because of incomplete risk information.[4] Genetic predispositions interact with other factors like the environment and adopting preventative or mitigating measures will alter a person's risk profile.

External barriers could also lead even a perfectly rational person with complete knowledge of her genetic risks to forgo needed insurance.[5] First and foremost, purchasing additional insurance costs money, money that people who are at heightened genetic risk may not have. Second, insurance systems are notoriously complex, and people may not know where to begin. Third, purchasing insurance does not occur in a vacuum; it may take significant time to collect the necessary documents and to undergo required medical evaluations.

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Last, when a person takes a genetic test, versus when she purchases insurance, can also have an effect on whether anti-selection occurs.[6] People may already have insurance or may opt to purchase it before taking a genetic test. In such cases, no information asymmetry exists, again minimizing the effects of anti-selection.

Ultimately, "Anti-Selection & Genetic Testing in Insurance: An Interdisciplinary Perspective" is a well-argued call for greater study of the magnitude of anti-selection in the real world to inform policymaking, domestically and abroad.

We agree greater empirical study of anti-selection is necessary, especially in the context of genetics, and argue that normative considerations are equally important to inform insurance policymaking.

Is it proper to consider genetics at all in risk-selection? Yes, those with genetic conditions like Huntington's Disease may deplete the insurance pool more than others, but are they owed any communal support? As the authors point out, risk-selection in genetics can compound generationally, as first one, then the next, then the next generation is denied the benefits of disability, life, or health insurance.[7] The consequence can be extreme economic disadvantage for families over time, especially in countries like the US that rely on private insurance as a poor substitute for adequate social safety nets. Widespread use of genetic testing for risk-selection turns what should have been a tool of public health into an instrument of disadvantage for some of the most vulnerable people in our society.

Furthermore, if risk-selection must be had, why use genetic information as opposed to some other information? It is the mere availability of the information that draws insurers to genetic risk. Other factors may equally impact the insurance pool, but in less predictable manners, through accidents or injuries. Moreover, highly predictive genetic tests tend to be for relatively rare conditions. Thus, underpricing the policies of the handful of people at heightened risk will probably not adversely impact the market.[8] People who test positive for less penetrant conditions may not be inclined to purchase additional insurance in the first place.[9]

We must understand better whether fears of anti-selection are overblown by insurers, to better inform our policies. If the evidence bears out that some anti-selection does exist, the answer is not to simply provide access to that information. Instead, we should ask ourselves whether the costs of anti-selection are justifiable to further the public good. Whether anti-selection affects the market should be the beginning — not the end — of the conversation for insurance regulators. If we must allow risk-selection in insurance, how do we create the social supports to assist not only those with costly genetic conditions, but all citizens regardless of disability, age, or socio-economic status?

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Note

The authors do not have any conflicts of interest to disclose.

References

1. Prince et al., "Anti-Selection & Genetic Testing in Insurance," *Journal of Law, Medicine & Ethics* 50, no. 1 (2022): 139-154.
2. *Id.*, at Part I.
3. *Id.*, at Part IV(A).
4. *Id.*, at Part IV(B).
5. *Id.*, at Part IV(C).
6. *Id.*, at Part IV(D).
7. *Id.*
8. The authors note that highly penetrant conditions like Huntington's may be so rare that they will not have a meaningful impact on insurance markets. *Id.*
9. *Id.*

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