§ 2615. Genetic testing written informed consent. (a) No authorized insurer or person acting on behalf of an authorized insurer shall request or require an individual proposed for insurance coverage to be the subject of a genetic test without receiving the written informed consent of such individual prior to such testing, in advance of the test.

(b) Written informed consent to a genetic test shall consist of written authorization that is dated and signed and includes at least the following:

(1) a general description of the test;

(2) a statement of the purpose of the test;

(3) a statement that a positive test result is an indication that the individual may be predisposed to or have the specific disease or condition tested for and may wish to consider further independent testing, consult their physician or pursue genetic counseling;

(4) a general description of each specific disease or condition tested for;

(5) the level of certainty that a positive test result for that disease or condition serves as a predictor of such disease. If no level of certainty has been established, this subparagraph may be disregarded;

(6) the name of the person or categories of persons or organizations to whom the test results may be disclosed;

(7) a statement that no tests other than those authorized shall be performed on the biological sample and that the sample shall be destroyed at the end of the testing process or not more than sixty days after the sample was taken; and

(8) the signature of the individual subject of the test or, if that individual lacks the capacity to consent, the signature of the person authorized to consent for such individual.

(c) A general waiver, wherein consent is secured for genetic testing without compliance with subsection (b) of this section, shall not constitute informed consent.

(d) Any further disclosure of genetic test results to persons or organizations not named on the informed consent requires the further informed consent of the subject of the test.

(e) In the event that an insurer's adverse underwriting decision is based in whole or in part on the results of a genetic test, the

authorized insurer shall notify the individual of the adverse underwriting decision and ask the individual to elect in writing, unless the individual has already done so, whether to have the specific test results disclosed directly to the individual or to the individual's physician, at the discretion of the individual.

(f) All records, findings and results of any genetic test performed on any person shall be deemed confidential and may not be disclosed without the written authorization as described in subsection (g) of this section of the person to whom such genetic test relates. This information may not be released to any person or organization not specifically authorized by the individual subject of the test. Unauthorized solicitation or possession of such information shall be unlawful, except for the unintentional possession of such information as part of a health record created prior to the date on which this section shall have become a law and provided no action adverse to the interests of the subject are taken as a result of such possession.

(g) Written authorization to records, findings and/or results of genetic tests that have been performed prior to the effective date of this section, or which was done after the individual had given written informed consent pursuant to this section shall consist of a statement which specifically requests genetic test records, findings and/or results, the person or organizations to whom the records, findings and/or results shall be disclosed, the signature of the individual subject of the records, findings and/or results of the test or, if that person lacks the capacity to consent, the signature of the person authorized to consent for the subject.

(h) No authorized insurer who lawfully possesses information derived from a genetic test on a biological sample from an individual shall incorporate such information into the records of a non-consenting individual who may be genetically related to the tested individual; nor shall any inferences be drawn, used, or communicated regarding the possible genetic status of the non-consenting individual.

(i) For the purposes of this section, the term "adverse underwriting decision" shall have the same meaning as defined in section twenty-six hundred eleven of this article and the term "genetic test" shall have the same meaning as defined in section seventy-nine-l of the civil rights law.

(j) If the superintendent determines after notice and a hearing that an authorized insurer or a person acting on behalf of an authorized insurer has violated this section, then the superintendent shall levy a fine up to five thousand dollars. Also, any authorized insurer or person acting on behalf of an authorized insurer who violates the provisions of this section shall be subject to the provisions of article twenty-four of this chapter. Violations of this section shall also be subject to the provisions of section one hundred nine of this chapter, except paragraph one of subsection (c) of such section.