



**House
Legislative
Analysis
Section**

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BCBSM: ASO CONTRACTS, ETC.

**House Bill 4534 as enrolled
Second Analysis (7-20-93)**

**Sponsor: Rep. Mary C. Brown
House Committee: Insurance
Senate Committee: Commerce**

THE APPARENT PROBLEM:

Several sections of the Nonprofit Health Care Corporation Reform Act, which governs Blue Cross and Blue Shield of Michigan, were ruled unconstitutional in 1985 by the Michigan Supreme Court. Some dealt with the regulation of administrative services only (ASO) contracts, which the court struck down because they held BCBSM to different standards than others in the ASO business. (ASO services are, in general, administrative services such as claims processing provided for a self-insured health benefit plan.) The court also said the creation in the act of a three-actuary panel to resolve disputes over "risk factors" used to determine the size of BCBSM's reserves was an unconstitutional delegation of authority because no standards were provided. Amendments have been proposed to the Blues act to address the court decision.

In another matter, the act requires of health care providers who participate with the corporation on a per claim basis that if they accept the BCBSM payment as payment in full for a certain procedure for one patient, they then must accept BCBSM payment as payment in full for that procedure for all patients for the calendar year. This means a provider cannot charge a patient an amount beyond what BCBSM pays for the procedure (or "balance bill"). An exemption from this provision was put into the act in for dentists in 1988 with an expiration date or sunset date of January 1, 1993. The recommendation has been made to extend the dentists' exemption.

THE CONTENT OF THE BILL:

The bill would amend the Nonprofit Health Care Corporation Reform Act, which regulates Blue Cross and Blue Shield of Michigan (BCBSM) to:

(1) add a new section regulating the "administrative services only" (ASO) business of the corporation;

(2) add language specifying that the approval or disapproval by the insurance commissioner of risk factors used in determining the corporation's contingency reserves would be based on whether or not they were "actuarially sound"; and

(3) continue until January 1, 1998, an exemption for dentists from the requirement that providers participating with BCBSM on a per claim basis who once accept payment from the corporation for a given procedure as payment in full must do so for all patients undergoing that procedure in the calendar year. (Under current law, the dentists' exemption carries an expiration date of January 1, 1993.)

ASO Contracts. The bill would regulate BCBSM's ASO business for the most part through a listing of prohibited acts, many of which deal with the misrepresentation of coverage and the processing of claims. It also would specify remedies and penalties for dealing with violations. The bill's provisions are much the same as those already found elsewhere in the BCBSM act (MCL 550.1402) applying to "certificates" of the corporation, and in the Third-Party Administrator Act (MCL 550.901 et al.), which applies to entities engaging in the business of providing administrative services for self-insured benefit plans.

Under the bill, the term "certificate" would no longer cover ASO contracts, and so provisions in the act that apply to certificates would not apply to those arrangements. The bill would, as a result, allow Blue Cross-Blue Shield to provide administrative services and cost-plus arrangements for any noninsured health benefit plan subject to the requirements found in one current section of the act (section 211) and the new section (section 211a) created by the bill. (The bill would define "noninsured health benefit plan" as a health benefit plan without coverage by an insurance company, Blue Cross-Blue Shield, a health maintenance

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organization, or the portion of a health benefit plan without such coverage that has a specific or aggregate excess loss coverage.)

The bill would also require the corporation to report with its annual statement the amount of ASO business it has conducted and the insurance commissioner would be required to transmit the information annually to the state revenue commissioner. The insurance commissioner would have to submit to the legislature on April 1, 1994, a report detailing the impact of the corporation's ASO activities (and similar activities under other laws) and, in consultation with the revenue commissioner, the total financial impact on the state for the preceding legislative biennium.

Risk Factors. The act as created in 1980 contained provisions for approving risk factors to be used in establishing BCBSM's contingency reserve levels for various lines of BCBSM business. The insurance commissioner was given the authority to approve or disapprove the risk factors. If he or she disapproved the risk factors, a panel of three actuaries would establish the risk factors. The bill would leave the process in place but specify that the commissioner would have to approve the factors if he or she determined them to be actuarially sound and disapprove them if he or she determined them not to be actuarially sound. The panel of actuaries would be required to determine actuarially sound risk factors.

MCL 550.1104 et al.

FISCAL IMPLICATIONS:

In the past, the Insurance Bureau has described similar bills as having no revenue or budgetary implications.

ARGUMENTS:

For:

The stated aim of the bill is to repair defects in the statute governing Blue Cross and Blue Shield of Michigan revealed in a 1985 Michigan Supreme Court decision. Among other things, it would regulate the "administrative services only" (ASO) business of BCBSM, mainly by applying to the corporation regulations to which others in the business are subject.

The bill would also extend the provision that allows dentists to take Blues subscribers as patients and charge different patients different amounts for the same procedure. While this is not common, reportedly, it is sometimes necessary when circumstances dictate a higher fee for a difficult case or type of patient. The bill simply maintains a long-standing practice for compensating dentists under Blues plans that has resulted in a very high rate of dentists participating (92-94 percent reportedly) with the corporation.

Against:

Some people have suggested removing the sunset on the dentistry provision entirely instead of merely extending it for five years.

Response:

Since the exemption singles out one kind of health care provider for special treatment, it may be best to retain a sunset provision so that the provision can be reevaluated from time to time.