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SFA BILL ANALYSIS

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Senate Bill 60 (as reported with amendments)
Sponsor: Senator John J. H. Schwarz, M.D.
Committee: Health Policy

Date Completed: 2-1-99

RATIONALE

In August 1996, the Congress passed and the President signed the Health Insurance Portability and Accountability Act (HIPAA), which sets standards for access, portability, and renewability of group and individual health care coverage. One of HIPAA's provisions gives persons who lose group coverage the right to guaranteed access to individual health insurance, under certain conditions. (For instance, a person must have had previous group coverage for at least 18 months; exhausted any residual employer coverage that was available; and applied for individual coverage within 63 days of group coverage termination.) The HIPAA required states to have regulations in place by January 1, 1998, to ensure that eligible persons have access to individual health insurance. The Federal Health Care Finance Administration (HCFA) is responsible for enforcing this requirement. Each state must enforce the HIPAA regulations, implement an approved state alternative, or not act. If a state does nothing to provide access to individual policies for persons who have lost their group coverage, then the HCFA may assume review and approval of health insurance policies in the state and enforce the individual insurance guarantee provisions in HIPAA. If a state chooses to enforce the HIPAA standards, then it must require all insurers that offer coverage in the individual market to make policies available to eligible individuals without exclusions for preexisting conditions. Though Michigan did not meet the deadline, reportedly it has notified HCFA that it intends to implement an alternative program that complies with HIPAA requirements. It has been suggested that Michigan adopt language in statute similar to the HIPAA provisions that give eligible persons access to individual health insurance, and require Blue Cross and Blue Shield of Michigan (BCBSM) to provide the coverage.

CONTENT

The bill would amend the Nonprofit Health Care Corporation Reform Act, which governs Blue Cross and Blue Shield of Michigan, to prohibit BCBSM from excluding or limiting health care coverage for an individual eligible for nongroup coverage or other coverage who had been insured under a group health plan, under conditions specified in the bill.

Currently, BCBSM is prohibited from excluding or limiting coverage for a preexisting condition for an individual covered under a group certificate. For a person covered under a nongroup certificate or under a certificate other than a group certificate, BCBSM may exclude or limit coverage for a condition only if the exclusion or limitation is related to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within six months before enrollment, and the exclusion or limitation does not extend over six months after the effective date of the certificate. The bill provides that notwithstanding this provision, effective October 1, 1999, BCBSM could not issue a certificate to a person who was eligible for a nongroup certificate, or a person eligible for a certificate other than a group certificate, that excluded or limited coverage for a preexisting condition or provided a waiting period, if all the following applied:

-- The person's most recent health coverage prior to applying for coverage with BCBSM had been under a group health plan.
-- The person had been continuously covered prior to the application for coverage with BCBSM under one or more health plans for an aggregate of at least 18 months, with no break in coverage that exceeded 62 days.
-- The person was no longer eligible for group coverage, Medicare, or Medicaid.
-- The person had not lost eligibility for coverage for failure to pay any required contribution or for an act to defraud BCBSM.
– The person had elected and exhausted group health plan coverage under the Federal Consolidated Omnibus Budget Reconciliation Act (COBRA), if he or she were eligible for continuation of coverage pursuant to COBRA.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Federal HIPAA required all states to have in place by January 1, 1998, regulations to provide eligible individuals who have lost their group health insurance coverage with access to individual health insurance coverage. Reportedly, while Michigan does not yet have a mechanism in place to conform to the HIPAA requirement, it has notified the HCFA that it intends to comply. The bill would put the State in compliance with HIPAA by requiring BCBSM to accept eligible clients under the conditions specified. This would ensure that persons received health coverage as intended under Federal law, and avoid a possible confrontation with the HCFA, which could impose its own version of individual coverage on the insurance industry if the State does not act.

Opposing Argument

If the bill does not pass, then perhaps the HCFA will require all insurers doing business in the State to participate in offering individual policies to persons who have lost their group coverage. This would relieve BCBSM of the full burden of the Federal law, and thus help BCBSM to avoid increasing rates or losing money. Blue Cross and Blue Shield of Michigan should not have to be the sole insurer of last resort. Since other insurers share in the benefits that accrue to them in providing health care coverage, they should likewise share in the responsibility to comply with Federal regulations designed to ensure that individuals are able to maintain proper insurance.

Response: The bill embodies the most efficient method for the State to comply with HIPAA. Further, BCBSM already provides health coverage to persons who are unable to obtain it elsewhere. The bill would affect a very small percentage of the BCBSM gross annual business.

Opposing Argument

The bill should include a requirement that BCBSM, or the State, in some manner inform persons that the coverage required under the bill was available as an option for eligible individuals. This would prevent some persons, who were simply not aware of the availability of the BCBSM policy, from going without insurance.

FISCAL IMPACT

The criteria prohibiting BCBSM from issuing a nongroup policy with preexisting exclusions or waiting periods, would most likely apply to persons who were recently in the work force and, as such, nominally healthy. If this were the case, then the absence of prior exclusions or waiting periods should, in and of itself, not have any significant impact on health insurance costs.

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