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Senate Bill 321 (as reported without amendment)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 10-10-11

RATIONALE

Under Michigan's no-fault automobile insurance system, personal protection insurance benefits (commonly referred to as personal injury protection, or PIP, benefits) are payable for allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. This typically includes the cost of medication. It is now being questioned whether this includes medical marihuana. In 2008, Michigan voters approved a ballot initiative to enact the Michigan Medical Marihuana Act (MMMA), which legalizes the possession and use of limited amounts of marihuana for those suffering from certain conditions. Automobile insurers evidently have begun receiving claims for the cost of medical marihuana and are unsure whether Michigan law requires coverage for those expenses. Since the MMMA provides that it does not require a governmental medical assistance program or commercial or nonprofit health insurer to reimburse a person for costs associated with the medical use of marihuana, it has been suggested that the Insurance Code should specify that charges for the medical use of marihuana would not be allowable expenses under PIP benefits.

CONTENT

The bill would amend the Insurance Code to exclude the medical use of marihuana from allowable expenses covered by personal injury protection benefits under an automobile insurance policy.

Currently, allowable expenses within PIP coverage do not include charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations unless the injured person requires special or intensive care, or charges for funeral and burial expenses that exceed the amount set forth in the policy, which may not be less than \$1,750 or more than \$5,000.

Under the bill, allowable expenses within PIP coverage also would not include the medical use of marihuana.

MCL 500.3107

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 MMMA allows people who have certain debilitating medical conditions, with documentation from a physician, to apply for and receive registry identification cards for the medical use of marihuana. The Act includes severe and chronic pain among the medical conditions for which a person may receive medical marihuana certification. This and other qualifying conditions may develop after a person is injured in a traffic accident. Reportedly, automobile insurers have begun to receive claims under a policy's PIP benefits for coverage of the cost of medical marihuana, and some insurance companies believe that they are required under Chapter 31 (Motor Vehicle Personal and Property Protection) of the Insurance

Code to cover those expenses. The MMMA explicitly states that it may not be construed to require commercial or nonprofit *health* insurers to reimburse a person for costs associated with the medical use of marihuana. By specifying that allowable expenses under PIP coverage would not include the medical use of marihuana, the bill also would exempt *automobile* insurers from having to cover medical marihuana expenses, which would make Chapter 31 consistent with the MMMA.

Supporting Argument

If medical marihuana expenses are not expressly excluded from PIP coverage, automobile insurers arguably are required to pay those costs under the mandate that PIP allowable expenses include charges incurred for products, services, and accommodations for an injured person's care, recovery, or rehabilitation. If automobile insurance companies provide coverage for medical marihuana, however, they could conceivably be subject to criminal charges related to delivery of a controlled substance and, given State and Federal forfeiture laws, insurers could even be subject to seizure and forfeiture of their assets.

Opposing Argument

It would be neither fair nor cost-effective to excuse no-fault auto insurers from having to reimburse injured parties for the cost of medical marihuana under a policy's PIP coverage. Marihuana is a legal medication under Michigan law for patients with qualifying conditions and should be treated under Chapter 31 the same as other medications. It would be inappropriate for the Insurance Code to single out one particular type of medication for exclusion from PIP coverage. Also, the cost of medical marihuana reportedly can be much lower than the cost of pharmaceuticals that are routinely prescribed for similar medical conditions. Precluding coverage for medical marihuana would conflict with cost-containment goals.

In addition, the bill would interfere with the doctor-patient relationship and deny equal access to a legal medical treatment for people injured in automobile-related accidents who chose to seek medical marihuana certification.

Response: According to testimony before the Senate Judiciary Committee by a medical marihuana advocate who was

involved with the drafting and passage of the MMMA, it was not the aim of the Act's authors and advocates to require insurers to pay for medical marihuana.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.