House Legislative Analysis Section

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REGULATE LONG-TERM CARE COVERAGE

House Bill 4391 as enrolled
Sponsor: Rep. Walter J. DeLange

House Bill 4396 as enrolled
Sponsor: Rep. Mary C. Brown

House Committee: Insurance
Senate Committee: Commerce & Technology
Second Analysis (7-26-90)

THE APPARENT PROBLEM:

Increasingly, public attention is focusing on the need to find ways to finance so-called long-term health care, particularly basic nursing home care. As the population ages, with more people living longer, the burden on families and government to pay for the help many older people need with the activities of daily living grows. According to a report by the Insurance Bureau and Office of Services to the Aging: "In Michigan, Medicare pays for about 2 percent of all long term care days. Another 2 to 3 percent of long term care patient days are paid by private insurance. About a quarter of the patients must pay for their own care out of their family funds. Nursing home stays are typically in excess of a year in duration with costs in excess of $40 per patient day. Most individuals do not have the funds necessary to meet the charges which will exceed $15,000 yearly. As a result of not having adequate funds, patients must eventually be covered by the Medicaid program which pays for almost 70 percent of all long term care patient days in Michigan." Researchers also report that seven of ten older persons living alone spend their income down to poverty levels after 13 weeks in a nursing home and that more than half of married couples are impoverished after one of the partners has spent six months in a nursing home. In the case of people with dementing disorders, such as Alzheimer's Disease, the lack of available financing of appropriate care, including help for families looking after an afflicted person, drains the economic and emotional resources of families and results in unnecessarily early and expensive institutionalization in nursing homes.

Slowly, the health insurance industry is beginning to move into this field and some employers are beginning to offer or at least consider offering coverage for long-term care. This is considered a hopeful sign because if people buy such coverage when they are young or receive the benefit through large employer groups, the risks are spread more widely and the cost of coverage is reduced. A recent state task force on Alzheimer's Disease and related conditions pointed out that it is in the interest of the state to encourage the insurance industry to develop and market long-term care policies in Michigan. But they warned: "The insurance products which are marketed are valuable only if they are well designed, reasonably priced, are understandable to the policyholders, and are marketed in an honest and straightforward manner." A package of bills regulating this emerging area of insurance has been developed that is intended to encourage the marketing of new policies while at the same time protecting the interests of consumers.

THE CONTENT OF THE BILLS:

House Bills 4391 and 4396 would regulate long-term care coverage, whether provided by a commercial insurance company or Blue Cross and Blue Shield of Michigan (BCBSM). House Bills 4391 would amend the Nonprofit Health Care Corporation Reform Act (regulating BCBSM) and House Bill 4396 would amend the Insurance Code. They are tie-barred to Senate Bills 250 and 311, which would, among other things, prevent long-term care policies from excluding certain conditions from coverage, including Alzheimer's Disease and related disorders. Senate Bill 250 would amend the act governing Blue Cross-Blue Shield and Senate Bill 311 would amend the Insurance Code. All of the bills carry an effective date of January 1, 1990.

House Bills 4391 and 4396 contain basically the same provisions. Among their major features are the following.

- The insurance commissioner would be authorized to promulgate rules establishing specific standards for provisions contained in long-term care coverage and, for commercial insurers, establishing loss ratio standards for such coverage. Rules would cover such matters as initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, definition of terms, terms of renewability, and standards setting forth the nature of required disclosures involved in the sale of long-term care coverage.
- A long term care policy (or certificate) would have to contain a guaranteed renewable provision, and companies would not be allowed to cancel or otherwise terminate a long-term care policy on the grounds of the age or the deterioration of the mental or physical health of the insured. If existing coverage was converted to or replaced by a long-term care policy, the new policy could not contain a new waiting period except for voluntarily selected benefit increases.
- Each long-term care policy would have to contain a conversion provision permitting an individual entitled to benefits under a group policy to convert to an individual policy with the option of receiving substantially similar benefits.
- A long-term care policy that provides coverage for care in an intermediate care facility or a skilled nursing facility would also have to provide coverage for home care services. The bills would define "home care services" to refer to one or more of the following: nursing services; physical therapy; speech therapy; respiratory therapy; occupational therapy; nutritional services; personal care services, homemaker services, adult day care, and similar nonmedical services; medical social services; and other similar medical and health-related support services. These services would be provided by an agency certified by Medicare and according to a written

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diagnosis and plan of care or an individual assessment and plan of care. (A policy need offer only one of the services on the list above.)

- Group coverage could be provided to employer and labor organizations, to professional, trade, and occupational associations, and to other kinds of associations and trusts if they met certain standards. The bill would also allow for the establishment of "discretionary groups" (those not specifically allowed to act as conduits for insurance) if the insurance commissioner determined that the issuance of the group policy was not contrary to the best interests of the public and would result in economies of acquisition or administration and that the benefits were reasonable in relation to the premiums charged.
- Group long-term care coverage could not be offered to a Michigan resident under a policy issued in another state to a discretionary group unless Michigan regulators or those of another state with similar requirements determined that all requirements had been met.
- Before advertising, marketing, or offering a group long-term care policy in the state to an association or combination of associations (other than employer, labor, professional or trade associations), an insurer would have to file evidence with the insurance commissioner that the group consisted of at least 100 members, had been in active existence for at least one year, held regular meetings at least annually, collected dues or solicited contributions from members, afforded members voting privileges and representation on the governing board and committees, and had been organized in good faith for purposes other than obtaining insurance, unless the commissioner waived the last requirement.
- A long-term care policy could not contain a pre-existing condition limitation period extending more than six months beyond the effective date of coverage. A different period of time could be set by the insurance commissioner if he or she determined it to be in the best interest of the public and if he or she considered it justified because the group in question was specially limited by age, group categories, or other specific policy provisions. Except for those issued to labor or employer groups, a policy could not use a definition of "preexisting condition" more restrictive than that found in the bills. Companies would not, however, be prevented from eliciting complete health histories from applicants. Commercial insurers could underwrite on the basis of those histories using their established underwriting standards. Unless the policy said otherwise, a preexisting condition would not have to be covered until after the waiting period. A policy could not exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period.
- A long-term care policy could not condition benefits on the prior institutionalization of the policyholder.
- Policyholders or subscribers would have the right to return policies within 30 days and have the premium refunded if they were not satisfied for any reason and had not received any benefits under the policy. They would also have up to 30 days to return a policy obtained as a result of a direct response solicitation (such as direct mail or advertisements in magazines or on television) if dissatisfied. In each case, the policy or certificate and the accompanying outline of coverage would have to notify the customer of the right to return in a prominently printed notice on the first page.
- The bills would define "long-term care insurance" or "long-term care coverage" as individual or group coverage promising or designed to cover at least 12 consecutive months of necessary services of a wide variety provided in other than an acute care unit of a hospital. The term does not include basic Medicare supplemental coverage, hospital confinement indemnity coverage, basic hospital expense coverage, basic medical-surgical expense coverage, major medical expense coverage, disability income protection coverage, catastrophic coverage, comprehensive coverage, accident-only coverage, specific disease or specific accident coverage, or limited benefit health coverage.

House Bills 4391 and 4396 are tie-barred to Senate Bills 250 and 311, which would require that long-term care coverages issued or renewed after the effective date of the bills (1) include coverage for intermediate/basic care, and (2) not limit or exclude coverage by type of illness, treatment, medical condition, or accident (other than auto accidents), except for: preexisting conditions; mental or nervous disorders, which could not be defined as more than neurosis, psychoneurosis, psychopathy, psychosis, or mental and emotional disease or disorder and could not include Alzheimer's Disease or related disorders; alcoholism and drug addiction; and conditions arising out of wars, riots, and insurrections, service in the armed forces, suicides, or intentionally inflicted injury, and aviation. A policy could require that before certain coverages took effect care would have to be recommended by a person specified in the policy and approved by the insurance commissioner. (The recommendation of a licensed treating physician could also trigger coverages, except for home care.)

Those two bills also require that a summary of benefits be provided to applicants for coverage in a prescribed form and a statement that further information was available by writing to the Insurance Bureau or calling the local area agency on aging. Senate Bill 311 would also raise the maximum fine for misrepresentation by an agent from $100 per violation to $1,000 per violation. An agent could instead be sentenced to imprisonment in the county jail of the county in which the offense was committed. Senate Bill 250 would apply to Blue Cross and Blue Shield of Michigan and Senate Bill 311 would amend the Insurance Code.

MCL 550.1101 et al. (House Bill 4391)

MCL 500.100 et al. (House Bill 4396)

FISCAL IMPLICATIONS:

In its analyses dated 3-13-89, the Department of Licensing and Regulation says that the bills have no revenue or budgetary implications.

ARGUMENTS:

For:

The bills regulating long-term care insurance are based on a model developed by the National Association of Insurance Commissioners and have as their aim protecting the public while encouraging the marketing of long-term care coverage by commercial insurers and Blue Cross and Blue Shield. This is an emerging area of insurance and currently no standards exist. The package of which these bills are a part would establish long-term care as a separate sphere of insurance with its own standards. Considering the problems that have existed (and, to some extent, still exist) with the design and marketing of Medicare supplemental policies, it is considered essential

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that standards be in place that ensure that long-term care policies available to Michigan residents provide meaningful coverage that meets the needs of customers.

The package would, for example, not allow companies to exclude coverage or benefits to people suffering from Alzheimer's Disease or other dementing disorders, as many existing types of coverage do. The bills would place restrictions on how companies treat pre-existing conditions, and would not allow companies to require the prior institutionalization of the insured before long-term care benefits can begin. This is important because many people need home health care or go to nursing homes without the need for hospitalization or other institutionalization and are then not covered under some existing policies. The bills also require that a long-term care policy provide coverage for at least some kind of home care, which is a low-cost alternative to nursing home care. Often it is the lack of available home care that forces people to enter nursing homes when they could otherwise live independently in their own homes. Further, the bills allow the insurance commissioner the power to permit the formation of new kinds of groups in order to increase the availability of group coverage.

Against:

Generally speaking, the problem with regulatory legislation of this kind is that it discourages insurance companies from entering the market and, thus, reduces the availability of coverage. Few if any of the existing long-term care policies could meet the standards in the bill, say some industry representatives. By setting standards too high, the legislature could make available only expensive coverages and take away from consumers the right to buy cheaper, albeit less comprehensive, long-term care coverage. For example, the bills would not allow a company to market a policy that requires prior hospitalization before long-term care benefits could begin. Some companies now offer both a policy with and one without prior hospitalization requirements and the former is far less expensive than the latter. Why not let companies offer both and allow consumers to choose? This package goes beyond the NAIC model by prohibiting prior "institutionalization" rather than prior hospitalization. Industry officials say there needs to be some standard for when benefits are to begin (a gatekeeper, such as prior hospitalization) and companies are uncomfortable allowing the insurance commissioner to decide that standard. The industry has other specific complaints as well, including the requirement that long-term care policies cover home health care. Under the NAIC model act, they say, home health care is optional, not mandatory, coverage. Moreover, since Michigan has no licensing law for home care, insurers would have no standards for determining who was an eligible (or competent) provider of services. Even relatives might qualify. This uncertainty drives up costs. The package at least ought to require that home care services meet some standards, such as certification by Medicare or the hospital accreditation committee.

Response: Coverage for home care should reduce costs to insurers by reducing the need for payments to nursing homes. Besides, the bills would require only that one of a list of home care services be provided. For example, a policy might provide only housekeeping coverage. (In fact, what many people need is not medical care but help with so-called activities of daily living.) The state does not need to license such services. The Insurance Bureau says, furthermore, that since long-term care policies are indemnity policies, payments will be to the insureds (policyholders) for a specific amount and for a specific length of time. The policyholders will decide who is to provide home care and the kind of care needed. It should also be noted that the Senate bills in the package would permit a "gatekeeper" mechanism in a policy if approved by the insurance commissioner; that is, certain coverages would only be available if care was recommended first by an approved person.

Against:

While these bills defining what a long-term care policy should look like are important, it is also essential that strong consumer protections be enacted that protect older people from marketing abuses by the insurance industry.

Response: Other bills containing consumer protections are under study by House and Senate committees and a part of an overall package dealing with long-term care coverages. The Senate bills in this package require a summary of benefits be provided to customers and provide for increased penalties for misrepresentation by insurance agents.