SFA BILL ANALYSIS

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Senate Bills 2,3,4, and 12
Sponsor: Senator Nick Smith
Committee: Commerce and Technology

Date Completed: 2-14-89

SUMMARY OF SENATE BILLS 2,3,4 and 12 as introduced 1-11-89:

The bills would amend various Acts to provide for notification of covered individuals when their health coverage contained an arbitration provision for a medical malpractice dispute; to specify persons to whom the provision would apply; and to specify the right of a covered individual to revoke an arbitration agreement. Senate Bill 2 would amend the Prudent Purchaser Act and apply to a prudent purchaser agreement and contract; Senate Bill 3 would amend the Public Health Code and apply to health maintenance organization (HMO) contracts; Senate Bill 4 would amend the Insurance Code relative to disability insurance policies and group disability insurance policies, and also would include "surplus lines insurers" within the definition of "malpractice insurer"; and Senate Bill 12 would amend the Nonprofit Health Care Corporation Reform Act, which regulates Blue Cross and Blue Shield of Michigan.

Notification

The bills would require a contract, policy, or certificate for health coverage that contained a provision for arbitration of a malpractice dispute to include a "statement of that fact in 12-point boldface type". The contract, policy, or certificate also would have to specify, in 12-point boldface type, that the covered individual could revoke an arbitration agreement within 60 days after the effective date of coverage and that execution of an arbitration agreement was not a prerequisite to health care or treatment. (Senate Bill 4 would require the 12-point boldface statement for an individual policy, but for a group policy would require a "conspicuous statement".) In addition to the statement within the contract, policy, or certificate, each organization offering health care coverage would have to develop and implement a procedure for notifying potential members about the arbitration agreement. Such a procedure would have to include, at a minimum, both notification that enrollment cards, contracts, policies, and certificates contained a statement, next to the signature line and in 12-point boldface type, describing the arbitration requirement; and the provision of an informational brochure that clearly explained the arbitration agreement and revocation provision.

In addition, Senate Bill 3 would require HMOs to notify the Department of Public Health of a "substantial" change in health maintenance contracts within 30 days after that change; and Senate Bill 12 would require a health care corporation that added an arbitration provision to a certificate to notify the Insurance Commissioner within 30 days of the effective date of the provision.

Arbitration

The bills would require that arbitration of a malpractice dispute be conducted according to procedures for health care arbitration outlined in the Revised Judicature Act (MCL 600.5043-600.5059).

A health care contract, policy, or certificate that contained an arbitration provision could not be considered a contract of adhesion, unconscionable, or otherwise improper because of the provision. An arbitration provision would apply to all individuals covered under the contract, policy, or certificate including their spouse and children, both born and in utero. In the case of a malpractice action involving the death of a covered individual, all persons to whom the individual, by law, owed a duty of support at the time of death would be considered covered by the arbitration agreement. In addition, the bills specify that if a contract, policy, or certificate included coverage for a minor, the contract, policy, or certificate could not be subject to disaffirmance if it were signed or otherwise agreed to by the minor's parent or legal guardian.

Right to Revoke

Within 60 days after the effective date of coverage, the covered individual could revoke the agreement to arbitrate. Upon the request of the covered individual to revoke the agreement, the insurer, health care corporation, HMO, or prudent purchaser organization (PPO) would be required to provide the covered individual with a form to sign, indicating revocation. The form would have to be prescribed by the Commissioner of Insurance and contain an original and one copy. The covered individual would have to sign the form and retain the copy. The original would have to be sent by registered mail to the insurer, health care corporation, HMO, or PPO. Revocation also could be accomplished by written request by registered mail. Such a notice would have to include the covered individual's name, address, and contract, policy, or certificate number as well as a statement of the individual's intent to revoke.

A covered individual who was covered, as a dependent, under another health care coverage or benefit plan and revoked the arbitration agreement under which he or she was primarily covered, would not be bound by the arbitration agreement of the other coverage. The bills would permit an insurer, health care corporation, HMO, or PPO to offer economic incentives in consideration of an agreement not to revoke the arbitration agreement.

The bills would require the Commissioner of Insurance to report to the Legislature on the effect of arbitration agreements, including cost savings realized as a result of arbitration agreements. The report(s) would have to be submitted within three years after the bills' effective date(s).

MCL 550.56 (Senate Bill 2)
333.21031 (Senate Bill 3)
500.3455 and 500.3612 (Senate Bill 4)
550.1204 and 550.1401 (Senate Bill 12)

Legislative Analyst: L. Burghardt

FISCAL IMPACT

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

Fiscal Analyst: J. Walker

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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.