House
Legislative
Analysis
Section

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INCLUDE PODIATRY IN HEALTH CARE CONTINUITY; ALLOW INSURANCE COMPANY PACS

House Bill 5958 as enrolled
Public Act 485 of 2000

House Bill 5959 as enrolled
Public Act 486 of 2000

Second Analysis (2-1-01)
Sponsor: Rep. Gerald Law
House Committee: Health Policy
Senate Committee: Health Policy

THE APPARENT PROBLEM:

Public Act 228 of 1999 amended the law governing Blue Cross and Blue Shield of Michigan (the Nonprofit Health Care Corporation Reform Act), and Public Act 230 of 1999 amended the Insurance Code, to provide for continuation of health care services by M.D.s and D.O.s under certain circumstances if participation in the health plan by an individual's primary care physician is terminated. (See the House Legislative Analysis Section analysis of enrolled House Bills 4485, 4486, and 4487 dated 12-27-99.) Generally, continuation of care is provided for 90 days after the physician's participation is terminated. Both acts define "physician" to mean allopathic (M.D.) or osteopathic (D.O.) physician. (See BACKGROUND INFORMATION.)

Legislation has been introduced to include podiatrists (see BACKGROUND INFORMATION) in the definitions of "physician" in the Nonprofit Health Care Corporation Reform Act and the Insurance Code.

In an unrelated matter, under the Insurance Code insurance companies currently are prohibited from making political donations. Legislation has been introduced to repeal this prohibition in the Insurance Code, thereby effectively allowing insurance companies to form political action committees under the Michigan Campaign Finance Act.

THE CONTENT OF THE BILLS:

The bills would amend acts regulating health insurance to include podiatric physicians in the definitions of "physician"contained in the acts, thus allowing continuation of services provided by podiatrists for 90 days after a podiatrist left the panel of a health plan. In addition, House Bill 5959 also would remove the current prohibition in the Insurance Code against insurance companies having political action committees.

House Bill 5958 would amend the Nonprofit Health Care Corporation Reform Act (MCL 550.1402c), which regulates Blue Cross and Blue Shield of Michigan, to add "podiatric physician" to the act's definition of "physician." (Note: The term "podiatric physician" currently is not a restricted title under the Public Health Code, unlike the phrase "podiatric physician and surgeon." See BACKGROUND INFORMATION.)

The act also currently specifies that it does not create an obligation of a health care corporation (that is, Blue Cross and Blue Shield) to provide coverage beyond the maximum coverage limits allowed by the corporation's certificate with a member. The bill would add, in addition, that the act did not create an obligation for Blue Cross and Blue Shield to expand who may be a primary care physician under a certificate. (Note: The term "primary care physician" currently is not defined in Michigan law. See BACKGROUND INFORMATION.)

House Bill 5959 would amend the Insurance Code (MCL 500.2212b et al.) to add "podiatric physician" to the act's definition of "physician," and to repeal the sections of the code that currently restrict the ability of insurance companies to make political contributions (thereby effectively regulating the political activities of insurance companies under the Michigan Campaign

Finance Act regulation of corporate political contributions. See MCL 169.254 and 169.255).

Repealers. House Bill 5959 would repeal three sections of the Insurance Code that currently grant the insurance commissioner authority to promulgate administrative rules relating to "risk retention groups" (MCL 500.1841), the conduct of licensees which are not association members (MCL 500.1946), and basic property insurance (MCL 500.2940). The bill also would repeal a section in the Insurance Code (MCL 500.2074) that prohibits insurance companies from making political contributions. (See BACKGROUND INFORMATION for the text of the section.)

BACKGROUND INFORMATION:

Definitions of "physician." In general, definitions of "physician" in Michigan law refer to someone licensed to practice medicine under Part 170 ("Medicine") or osteopathic medicine and surgery under Part 175 ("Osteopathic Medicine and Surgery") of the Public Health Code. (See, for example, the definitions in the Michigan Vehicle Code [MCL 257.709(8)(a)], the Natural Resources and Environmental Protection Act [MCL 324.40115(1)(c)], the Mental Health Code [MCL 330.1100c(4)], the Determination of Death Act [MCL 333.1032], the Michigan Do-Not-Resuscitate Procedure Act [MCL 333.1052(m)], and the Occupational Code [MCL 339.105(7)].)

The term "physician" is defined in several different places in the Public Health Code itself. Part 170 ("Medicine") defines "physician" to mean "an individual licensed under this article [Article 15, Occupations] to engage in the practice of medicine" (that is, an M.D.), while Part 175 defines the term to mean "an individual licensed under this article to engage in the practice of osteopathic medicine and surgery" (that is, a D.O.). The health code defines the practice of medicine to mean "the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do any of these acts." (MCL 333.17001) The health code defines the practice of osteopathic medicine and surgery to mean "a separate, complete, and independent school of medicine and surgery utilizing full methods of diagnosis and treatment in physical and mental health and disease, including the prescription and administration of drugs and biologicals, operative surgery, obstetrics, radiological and other electromagnetic emissions, and placing special emphasis on the interrelationship of the musculoskeletal system to other body systems." (MCL 333.17501)

In addition to these two health code definitions, however, both the Michigan Essential Health Provider Recruitment Strategy part of the Public Health Code [MCL 333.2701(e)] and the general provisions of Article 5 ("Prevention and Control of Diseases and Disabilities") [MCL333.5119(6)(c)] define "physician" to mean "an individual licensed as a physician under Part 170 or an osteopathic physician under part 175." And both the terminal illness part (Part 56A) and the optometry part (Part 174) of the health code define "physician" to mean "that term as defined in section 17001 [i.e., M.D.] or 17501 [i.e. D.O.]."

More recently, the terms "allopathic physician" and "osteopathic physician" have been used in law, as in Public Acts 228 and 230 of 1999, which the bills would amend (and which themselves amended the Nonprofit Health Care Corporation Reform Act and the Insurance Code, respectively). Similarly, the part of the Michigan Penal Code known as the Infant Protection Act (Public Act 107 of 1999) defines "physician" to mean "an individual licensed to engage in the practice of allopathic medicine or the practice of osteopathic medicine and surgery" under the Public Health Code (MCL 750.90g).

Restricted titles. Under the general provisions (Part 161) of Article 15 ("Occupations") of the Public Health Code, both the terms "chiropractic physician" and "podiatric physician and surgeon" are among the titles restricted by the health code to persons authorized to use them under the code (MCL 333.16263). Other words, titles, and letters that are limited to the use of chiropractic physicians include "doctor of chiropractic," "chiropractor," and "D.C." Those limited to the use of podiatric physicians include "chiropodist," "podiatrist," "doctor of podiatric medicine," "foot specialist," and "D.P.M."

This section of the health code also restricts the use of "doctor of medicine" and "M.D."; "doctor of optometry," "optometrist," and "O.D."; "osteopath," "osteopathic practitioner," "doctor of osteopathy," "diplomate in osteopathy," and "D.O." This section of the health code also lists among its restricted titles doctors of dental surgery and veterinary medicine.

"Podiatrist." Part 180 ("Podiatric Medicine and Surgery") of the Public Health Code defines "podiatrist" to mean "a physician and surgeon licensed under this article to engage in the practice of podiatric

medicine and surgery." (MCL 333.18001) The health code limits podiatrists' scope of practice, defining "practice of podiatric medicine and surgery" to mean "the examination, diagnosis, and treatment of abnormal nails, superficial excrescences occurring on the human hands and feet, including corns, warts, callosities, and bunions, and arch troubles or the treatment medically, surgically, mechanically, or by physiotherapy of ailments of human feet or ankles as they affect the condition of the feet. It does not include amputation of human feet or the use or administration of anesthetics other than local." (MCL 333.18001)

"Primary care physician." The term "primary care physician" (as well as the term "primary care provider") is mentioned several times in Michigan law, but not defined. The Insurance Code (MCL 500.3817) and the Nonprofit Health Care Reform Act (MCL 550.2467) both mention "primary care physician" in sections of these laws dealing with Medicare and contrast primary care physicians with "specialty physicians." A 1999 amendment to the Insurance Code (Public Act 402) also references "a participating primary care provider" in a provision (MCL 500.3406m) that allows "female insureds" access to obstetrician-gynecologists instead of "a participating primary provider" under insurance policies or certificates that provide for annual well-woman examinations and routine obstetrical and gynecological services.

Restrictions on political contributions by insurers. Section 2074 of the Insurance Code prohibits insurance companies from making or offering political contributions and makes violations of the prohibition a misdemeanor punishable by imprisonment for up to one year and a fine of up to $1,000 ("in the discretion of the court"). The full text of the section that amending section 2 of the bill would repeal reads as follows:

Sec. 2074. (1) ***Insurer's making or offering prohibited.*** *No insurer doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use any money or property for or in aid of any political parties, committee or organization, or for or in aid of any corporation, joint stock or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such officer, or for the purpose of influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of such insurer, or for any political purpose, whatsoever, or for the reimbursement or indemnification of any person for money or property so used, notwithstanding the provisions of section 14 of chapter 2 of part 5 of Act No. 351 of the Public acts of 1925, being section 196.14 of the Compiled Laws of 1948.*

(2) ***Violation, penalty, liability for illegal contributions.*** *Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, or advises or consents to any such violation and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor and be punished by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both such fine and imprisonment in the discretion of the court; and any officer aiding or abetting in any contribution made in violation of this section shall be liable to the insurer for the amount so contributed.*

On April 28, 1980, Governor John Engler requested an opinion from the attorney general on the constitutionality of a specific provision of this section of the Insurance Code, namely, that "which prohibits political contributions which would influence or affect the vote on a ballot proposal by insurers doing business in the State of Michigan." (OAG No. 5695 of 1980) The attorney general concluded that the provision in section 2074 of the Insurance Code that prohibits contributions by insurers which would influence or affect the vote on ballot questions was unconstitutional, and could be severed without invalidating the entire section. (The specific language that was unconstitutional and severable reads "or for the purpose of influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of such insurer.")

The attorney general also pointed out that the Campaign Finance Act permits a corporation or joint stock company to make a contribution when the purpose is "for the qualification, passage, or defeat of a ballot question" (MCL 169.254) and to establish separate, segregated funds which may be solicited from very specific sources and used for very specific political purposes, and that other attorney general opinions had held that the extent of corporate investments in the financing of elections was limited to the manner and method authorized in this section of the Campaign Finance Act.

Corporate contributions to elections. Corporate campaign contributions are regulated under sections 54 and 55 of the Michigan Campaign Finance Act (MCL

169.254 and 169.255). Section 55 (MCL 169.255) of the act allows for-profit corporations and joint stock companies (labor organizations were added in 1994 and American Indian tribes in 1995) "to make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes." A separate segregated fund (SSF) is "limited" to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committee, and independent committees. (The only other committees allowed, under a 1995 amendment to the act [see MCL 169.224a], are legislative house [House of Representatives or Senate] "political party caucus committees." Because they are not listed in section 55, presumably corporate SSFs, or political action committees, cannot contribute to these political party caucus committees.) Nonprofit corporations also can establish PACs, though they can solicit funds from more sources than for-profit corporations. Violations (section 54) are felonies with different penalties, depending on whether the violator is an individual or an organization.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have no fiscal implications. (9-28-00)

ARGUMENTS:

For:

The bill would allow limited continuity of care by podiatrists under legislation that was enacted in 1999. Public Acts 228 and 230 of 1999 allow patients under the care of a medical (M.D.) or osteopathic doctor (D.O.) to continue to receive health care benefits from that doctor for 90 days after a contract between the doctor and the health plan is terminated. These "continuity of care" provisions enable patients to maintain continuity of medical care for a period of time without interruption or financial penalty. Te bills would allow the same limited continuity of care by podiatrists (D.P.M.s). This could be particularly helpful to patients who underwent foot surgery shortly before the individual's podiatric coverage was changed or terminated in such as way that their podiatrist no longer had a contract with the patient's insurer.

Against:

Why should the bills add only podiatrists to the current continuity of care provisions? Why not add all currently licensed health practitioners covered under health care plans to the continuity of care provisions? For example, many health plans include chiropractic coverage, as well as podiatric coverage. If podiatric coverage is to be continued, why not chiropractic -- and any other existing health or medical care -- coverage?

Apparently, some people argued that the omission of podiatrists from the 1999 statutory continuity of care provisions was a "technical oversight," based on the mistaken belief that podiatrists were included in the Public Health Code's definition of "physician." But although the health code does include "physician" in one of podiatrists' legally restricted titles (namely, "podiatric physician and surgeon"), podiatrists are not included in any of the definitions of "physician" in the Public Health Code (or in other acts), where "physician" generally refers to medical and osteopathic doctors, who have unrestricted licenses.

Some people also apparently have argued that because podiatrists are a kind of "physician" they should be included under the definition of "physician" in the provisions regarding continuity of care. This argument, however, fails to recognize the wide differences in the scope of practice between medical ("allopathic") and osteopathic physicians, and other health or medical care practitioners legally allowed to use the word "physician" in their titles. While it is true that podiatrists also may call themselves "podiatric physicians and surgeons," their scope of practice is very much more limited than that of an M.D. or a D.O. (see BACKGROUND INFORMATION). What is more, other health or medical care practitioners also are legally entitled to use either the word "physician" or "doctor" in their statutorily protected titles, including chiropractors ("doctor of chiropractic," "chiropractic physician"), dentists ("doctor of dental surgery") and veterinarians ("veterinary doctor") as well as "podiatric doctor." If the argument for including podiatrists in the continuity of care provisions hinges on the fact that a medical or health care practitioner statutorily entitled to use the term "physician" (or "doctor") should be included in the continuity of care definitions of "physician," then shouldn't all these practitioners -- such as chiropractors and certain dentists, if not veterinarians -- also be included as well?

Against:

Since M.D.s and D.O.s are the only physicians with unrestricted licenses, the continuity of care provisions are, and should remain, restricted to these two kinds of doctors. In fact, the section of the Nonprofit Health Care Corporation Reform Act that House Bill 5958 would amend refers initially to the termination of participation between "a primary care physician" and a health care corporation (that is, Blue Cross and Blue

Shield of Michigan). Although later in this section the act refers only to "a member's current physician," rather than a member's current "primary care" physician, one of the proposed amendments to House Bill 5958 again refers to "primary care physicians." This would seem to indicate that the term "physician" in this section of the Blue Cross Blue Shield law (and the corresponding section of the Insurance Code) were in fact intended to refer to primary care physician, that is, medical or osteopathic doctors with unrestricted licenses. If this is true, then podiatrists should not be added to the definition of "physician," since podiatrists have such a restricted scope of practice that they don't qualify for the general understanding of "primary care physician."

Response:

While a patient's primary care physician -- in the form of a medical or osteopathic doctor -- undoubtedly is integral to that patient's health and medical care, other health and medical care practitioners also contribute significantly to people's medical and health care needs. Why should continuity of care be preserved only for M.D.s and D.O.s and not other health and medical care providers? Scope of practice alone should not determine whether or not a patient is entitled to the limited continuity of care offered under current law.

For:

House Bill 5959 would eliminate the existing prohibition in the Insurance Code against insurers making all but very restricted political contributions, namely, as in the case of ballot questions that "materially" affect any of the insurer's property, business or assets. (See BACKGROUND INFORMATION.) The bill, with this repeal, would greatly expand insurance companies' abilities to make political contributions, since insurance companies' political contributions would then come under the Michigan Campaign Finance Act's regulations governing the political contributions of corporations and joint stock companies (see MCL 169.254 and 169.255). Under the campaign finance act, corporations and joint stock companies (as well as labor organizations and "domestic dependent sovereigns," which is to say, American Indian tribes) are allowed to establish "separate segregated funds" (basically, political action committees) that could then make contributions to, and expenditures on behalf of (so-called "soft" money), five of the six kinds of "committees" allowed under the act: candidate committees, ballot question committees, political committees, and independent committees. The only committee that corporate PACs are not authorized to make contributions to, or expenditures on behalf of, are House or Senate political party committees, a kind of committee established statutorily by Public Act 264 of 1995. The bill, in other words, would put insurance companies on the same basis as other corporations with regard to political contributions.

Against:

The addition of the amendment in House Bill 5959 that would repeal the Insurance Code's restrictions on political contributions by insurance companies was done late in the legislative process during a lame duck session, and was done in a way that provided no opportunity for public testimony or input. Several legislators in both houses of the legislature vigorously objected to this last minute amendment, and argued that such an important change as the removal of a decades-long ban on political action committees funded by insurance companies should at least have been discussed on its own merits with public input and deliberation at fair and open hearings. In fact, the amendment is a good example of why some people have introduced legislation to restrict what can be done in so-called "lame duck" legislative sessions, where public accountability is at a minimum.

Against:

The amendment in House Bill 5959 that would repeal the prohibition against insurance company PACs (political action committees) goes in exactly the opposite direction that campaign reform ought to go. Instead of increasing the influence of "big money" on political campaigns, campaign reform ought to be decreasing that influence. As more than one legislator argued on the floor, this amendment is campaign "deform," not "reform."

Response:

Proponents of the amendment to allow insurance companies to have PACs argue that insurance companies should be treated like any other corporation with regard to their ability to form PACs and donate to political campaigns. Why should insurance companies be treated any differently than other corporations?

Reply:

Perhaps the true campaign finance reform should treat all corporations alike, but perhaps do so by jettisoning the legal fiction that corporations are "persons" with all of the constitutional rights of individual citizens.

Against:

The bill likely is unconstitutional because of the addition of the repealer of the Insurance Code provisions regarding political contributions. Some legislators argued that adding the insurance PAC amendment to House Bill 5959 violated not only the rules of the House of Representatives, but also the state

constitution. Article IV, Section 20 says in its entirety that *"No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title."* House Bills 5958 and 5959 were introduced to add podiatrists to the continuity of care provisions of the Blue Cross and Blue Shield law (the Nonprofit Health Care Reform Act) and the Insurance Code. The addition of podiatrists to continuity of care provisions in these laws has nothing to do with allowing insurance companies to establish political action committees, and surely violates the constitutional prohibition against changing a bill's original purpose.

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#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.