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SFA BILL ANALYSIS

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Senate Bill 234 (Substitute S-1)
Senate Bill 236 (Substitute S-1)
Sponsor: Senator Bev Hammerstrom
Committee: Health Policy

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CONTENT

Senate Bill 234 (S-1) would amend the Nonprofit Health Care Corporation Reform Act, which governs Blue Cross and Blue Shield of Michigan (BCBSM), to do the following:

-- Provide that BCBSM would be subject to Chapter 37 (Small Employer Group Health Coverage) of the Insurance Code (proposed by Senate Bill 460).
-- Require BCBSM to maintain an unimpaired surplus in an amount determined adequate by the Commissioner of the Office Financial and Insurance Services to comply with the Insurance Code.
-- Allow BCBSM to remedy a deficiency in surplus with planwide viability contributions by subscribers at rates prescribed by the bill.
-- Require the Commissioner to hold a hearing on a proposed certificate or rate, and allow the Attorney General to request a hearing on a rate filing.
-- Apply current nongroup rate filing and approval requirements to nongroup Medicare supplemental coverage.
-- Require BCBSM to report financial information in the manner other insurers are required to report.
-- Exempt BCBSM's funds and property from utility usage taxes and fees.

Senate Bill 236 (S-1) would amend the Act to permit BCBSM to use an application form for long-term coverage that was designed to elicit an applicant's complete health history. The bill provides that BCBSM could charge a different rate based on age for the same long-term care coverage if the rate differential were based on sound actuarial principles and a reasonable classification system, and were related to actual and credible loss statistics or, for new coverages, related to reasonably anticipated experience. Also, BCBSM could condition the granting of long-term care coverage based on answers given on the long-term care application, pursuant to underwriting standards established by BCBSM. The sale of long-term care insurance would not be tax-exempt.

Senate Bill 234 (S-1) is tie-barred to Senate Bill 460, which would add Chapter 37 (Small Employer Group Health Coverage) to the Insurance Code. Senate Bill 236 (S-1) is tie-barred to Senate Bill 234.

A more detailed description of Senate Bill 234 (S-1) follows.

Unimpaired Surplus

Under the bill, BCBSM would have to possess and maintain an unimpaired surplus in an amount determined adequate by the Commissioner to comply with Section 403 of the Insurance Code (which requires authorized insurers to be safe, reliable, and entitled to public confidence). The Commissioner would have to follow the risk-based capital requirements as developed by the National Association of Insurance Commissioners (NAIC) in order to determine whether BCBSM was in compliance with Section 403.

If BCBSM filed a risk-based capital report indicating that its surplus was less than the amount determined adequate by the Commissioner, BCBSM would have to prepare and submit a plan for remedying the deficiency in accordance with risk-based capital requirements adopted by the Commissioner. Among the remedies that

BCBSM could employ would be planwide viability contributions to surplus by subscribers. If those contributions were employed, they would have to be made in accordance with the following:

-- If BCBSM's surplus were less than 200% but more than 150% of the "authorized control level" under risk-based capital requirements, the maximum contribution rate would be .5% of the rate charged to subscribers for the benefits provided.
-- If BCBSM's surplus were 150% or less than the authorized control level under risk-based capital requirements, the maximum contribution rate would be 1% of the rate charged to subscribers for the benefits provided.
-- The actual contribution rate charged would be subject to the Commissioner's approval.

("Authorized control level" would mean the number determined under the risk-based capital formula in accordance with the instructions developed by the NAIC, and adopted by the Commissioner.)

The bill would repeal Section 205 of the Act. Under Section 205, BCBSM must maintain a contingency reserve within a prescribed range of a "target contingency reserve level". Contributions to the contingency reserve consist of two components: an actuarially based contribution for risk, and a contribution for planwide viability. For all group and nongroup subscribers, the viability contribution rate is 1% of the established rate if the reserve is below 65% of the target. For small group and nongroup subscribers, the contribution rate is .5% of the established rate if the reserve is between 65% and 95% of the target. For medium and large group subscribers, the contribution rate is .5% if the reserve is between 65% and 105% of the target. The contribution rate is 0% for small group and nongroup subscribers if the reserve is over 95% of the target, and 0% for medium and nongroup subscribers if the reserve exceeds 105% of the target.

The bill would replace various references to the contingency reserve with references to the unimpaired surplus.

Small Employer Group Health Coverage

Under the bill, BCBSM would be subject to Chapter 37 of the Insurance Code (proposed by Senate Bill 460). To the extent that a provision of the Nonprofit Health Care Corporation Reform Act concerning health coverage, including premiums, rates, filings, and coverages, conflicted with Chapter 37, Chapter 37 would supercede the Act.

Investments

Under the Act, BCBSM may buy, sell, and otherwise deal in bonds and other obligations, shares, or other securities issued by a domestic, foreign, or alien insurer, as long as the activity will not result in BCBSM's owning or controlling 10% or more of the voting securities of the insurer. The Act also states that, except where expressly authorized by statute, BCBSM may not indirectly engage in any investment activity that it may not engage in directly, and may not guarantee or become surety upon a bond or other undertaking securing the deposit of public money. The bill would delete those provisions.

Under the bill, BCBSM could deal in bonds and other obligations, shares, or other securities of a domestic, foreign, or alien insurer, as long as the activity satisfied Chapters 9 and 13 of the Insurance Code. (Chapter 9 regulates domestic insurers' reserves and investments. Chapter 13 governs domestic insurer holding companies.)

Certificate & Rate Filings

The Act requires BCBSM to submit to the Commissioner a copy of any new or revised certificate along with applicable proposed rates and rate rationale. The certificate and proposed rates must be considered approved and effective 30 days after filing, except as otherwise provided. The Commissioner may subsequently disapprove any certificate deemed approved. The bill would delete these provisions.

Under the bill, if BCBSM wanted to offer a new certificate, change an existing certificate, or change a rate charge, a copy of the proposed certificate, proposed revised certificate, or proposed rate would have to be filed with the Commissioner and could not take effect until 60 days after the filing unless the Commissioner approved the change in writing before the 60 days expired. This provision would be subject to Section 608 of the Act (which concerns rates charged to nongroup subscribers). The bill would allow the Commissioner subsequently to disapprove any certificate or rate change.

As currently provided, the proposed language would be subject to the requirement that the Commissioner exempt from prior approval, certificates resulting from a collective bargaining agreement.

In addition, the bill would require the Commissioner to schedule a hearing within 30 days after receiving a written request from BCBSM, and the revised certificate, revised proposed certificate, or proposed rate would not take effect until approved by the Commissioner after the hearing. Within 30 days after the hearing, the Commissioner would have to give BCBSM written notice of the disposition of the certificate or rate, together with his or her findings of fact and conclusions.

The bill also would require the Commissioner, upon receiving a rate filing, to notify the Attorney General and give him or her a copy of the proposed rate revision. Upon making a written request for a hearing within 30 days after receiving this notice, the Attorney General would have to have an opportunity for an evidentiary hearing to determine whether the proposed rate met the Act's requirements. The request would have to identify the issues that the Attorney General asserted were involved and what portion of the rate filing was requested to be heard. If the Attorney General requested a hearing, the Commissioner could not approve, approve with modifications, or disapprove a filing until the hearing had been completed and an order issued.

Medicare Supplemental Rates

Under the Act, the rates charged to nongroup subscribers must be filed in accordance with Section 610 (which governs the filing of information and materials relative to a proposed rate) and are subject to the prior approval of the Commissioner. Under the bill, these provisions would apply to the rates charged to nongroup Medicare supplemental subscribers, instead of nongroup subscribers.

The bill would delete provisions concerning the filing of the methodology and definitions of each rating system, formula, component, and factor used to calculate rates for group subscribers; requiring the Commissioner to approve, disapprove, or modify and approve the methodology and definitions; and requiring BCBSM to refile for approval every three years.

Under Section 610, subject to several exceptions, a filing of information and materials relative to a proposed rate must be made at least 120 days before its proposed effective date. The Commissioner must take certain actions within 30 days after information and materials are filed, and must give notice about the proposed rate revision to people who requested notice within the previous two years. Under the bill, these requirements would apply to information and materials relative to a proposed nongroup Medicare supplemental rate.

Other Provisions

Financial Reporting. The bill would require BCBSM to report financial information in conformity with sound actuarial practices and statutory accounting principles, including approved permitted practices, in the same manner as designated by the Commissioner for other carriers under the Insurance Code.

Other Jurisdictions. The Act permits BCBSM to enter into participating contracts for reimbursement with professional heath care providers practicing legally in the State for health care services that the providers may legally perform. The bill also would permit BCBSM to enter into participating contracts for reimbursement with health care practitioners practicing legally in any other jurisdiction for health care services that the practitioners may legally perform.

MCL 550.1107 et al.

Legislative Analyst: Claire Layman
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FISCAL IMPACT

Senate Bill 234 (S-1)

Together with Senate Bill 460, this bill would alter the current process by which the State regulates Blue Cross and Blue Shield of Michigan and other health benefit carriers. If this change resulted in an increased cost to the Office of Financial and Insurance Services, the assessment would be adjusted accordingly; therefore, these bills would be revenue neutral.

Senate Bill 236 (S-1)

It appears that this bill would not make it any more or less likely that a person would decide

to obtain a long-term care insurance plan (or affect the availability of long-term care plans). Therefore, the bill should have no direct fiscal impact on State or local publicly funded health care programs.

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