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Senate Bills 612, 613, and 614 (as introduced 9-7-11)
Sponsor: Senator Mark C. Jansen
Committee: Health Policy

Date Completed: 11-29-11

CONTENT

Senate Bills 612 and 613 would amend the Insurance Code and the Nonprofit Health Care Corporation Reform Act, respectively, to do the following:

- Prohibit a qualified health plan offered through a State exchange from providing coverage for elective abortion.
- Prohibit a policy, certificate, or contract offered outside the exchange from providing elective abortion coverage except by an optional rider.
- Establish requirements that an employer would have to meet in order to purchase an optional rider providing coverage for elective abortion.

Senate Bill 612 would apply to an insurer and a health maintenance organization (HMO). Senate Bill 613 would apply to Blue Cross Blue Shield of Michigan (BCBSM).

Senate Bill 614 would amend the Public Health Code to do the following:

- Prohibit a licensee or registrant, or a health facility or agency, from accepting reimbursement from a qualified health plan, policy, certificate, or contract for elective abortion services unless the reimbursement were from an optional rider.
- Prescribe a civil fine of up to \$10,000 for a violation.
- Require the Department of Licensing and Regulatory Affairs (LARA) to investigate an alleged violation, and authorize the Attorney General to bring an enforcement action.

Senate Bill 614 is tie-barred to House Bills 4143 and 4147 (which are the same as Senate Bills 612 and 613, respectively).

Senate Bills 612 and 613

Under the bills, a qualified health plan offered through a State exchange pursuant to the Federal Patient Protection and Affordable Care Act and the Federal Health Care and Education Reconciliation Act could not provide coverage for elective abortion. The bills provide that they could not be construed to prohibit an individual, organization, or employer participating in a qualified health plan offered through a State exchange from purchasing optional supplemental coverage for elective abortion outside of the exchange, as described below.

("Elective abortion" would mean the intentional use of an instrument, drug, or other substance or device to terminate a woman's pregnancy for a purpose other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus. The term would not include the prescription or use of a drug or device intended as a contraceptive. It also would not include the intentional use of an instrument, drug, or other substance or device by a physician to terminate a woman's pregnancy if the woman's physical condition, in the physician's reasonable medical judgment, necessitated termination of the pregnancy to avert her death.)

An expense-incurred hospital, medical, or surgical policy or certificate delivered, issued for delivery, or renewed in Michigan, an HMO group or individual contract, and a BCBSM group or nongroup certificate offered outside of a State exchange, could not provide elective abortion coverage except by an optional rider for which the purchaser had paid an additional premium.

An employer could purchase an optional rider to provide coverage for an elective abortion if both of the following conditions were met:

- The cost of the rider was not factored into any premium amount for which individual employees contributed a portion of the premium paid either directly or through a payroll deduction.
- The employer notified each employee that elective abortion would be included as a rider to his or her health coverage and the coverage could be used by a minor or dependent female without notice to the employee.

The bills would not require an insurer, an HMO, BCBSM, or an employer to provide or offer to provide an optional rider for elective abortion coverage.

The bills would not apply to benefits provided under Title XIX of the Social Security Act (which pertains to Medicaid).

The bills state that they would not create a right to abortion. Notwithstanding any other provision of the bills, a person could not perform an abortion that was prohibited by law.

Senate Bill 612 would apply to a policy, certificate, or contract delivered, issued for delivery, or renewed in Michigan, as well as an HMO group or individual contract, and Senate Bill 613 would apply to a BCBSM certificate issued or renewed in Michigan, on or after the bills' effective date.

Senate Bill 614

The bill would prohibit a licensee or registrant, and a health facility or agency, from seeking or accepting reimbursement from a qualified health plan, an expense-incurred hospital, medical, or surgical policy or certificate, an HMO group or individual contract, or a BCBSM group or nongroup certificate, for any services provided that were directly related to the performance of an elective abortion, unless the reimbursement were from an optional rider provided under the Insurance Code or the Nonprofit Health Care Corporation Reform Act (as proposed by Senate Bills 612 and 613 and House Bills 4143 and 4147).

The bill states that it would not affect legitimate and routine obstetric care, diagnostic testing, or other nonabortion procedures.

A licensee, registrant, or health facility or agency that violated the bill would be liable for a civil fine of up to \$10,000 per violation. A licensee or registrant also would be subject to administrative penalties prescribed in the Public Health Code. The bill would require LARA

to investigate an alleged violation. The Attorney General, in cooperation with LARA, could bring an enforcement action.

The bill provides that it would not restrict the right of a licensee, registrant, health care professional, or other health facility or agency employee to discuss abortion or abortion services with a pregnant patient.

The bill also states that it would not create a right to abortion, and a person could not perform an abortion that was prohibited by law.

Proposed MCL 500.3407c (S.B. 612)
Proposed MCL 550.1402d (S.B. 613)
Proposed MCL 333.16240 & 333.20195 (S.B. 614)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 612 and 613 would affect insurance products offered through the proposed health insurance exchange. Pursuant to the Federal health reform legislation, the exchange would begin operation in 2014. Restrictions on insurance products offered by the exchange would not affect the State's Medicaid program; thus, there would be no fiscal impact on Medicaid or other health insurance programs offered by the State. Instead, the abortion restrictions would affect State and local governments as employers.

Because the legislation would carve out abortion coverage as an optional supplemental coverage, it is a reasonable assumption that the pricing of such supplemental policies would reflect the expenses incurred under that supplemental coverage. As such, there would be no net cost to employers in general or State and local government in particular.

Senate Bill 614 would direct the Department of Licensing and Regulatory Affairs to investigate violations of Senate Bills 612 and 613 (or House Bills 4143 and 4147). To the extent that such investigations occurred, the Department would incur indeterminate costs. Those found to be in violation would be subject to fines of up to \$10,000 per violation, which would lead to an indeterminate increase in State revenue.

Fiscal Analyst: Steve Angelotti

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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.