Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 61 and 62 (as reported without amendment)
Sponsor: Senator Joe Hune (S.B. 61)
Senator Virgil Smith (S.B. 62)
Committee: Insurance

CONTENT

Senate Bill 61 would amend the Nonprofit Health Care Corporation Reform Act to do the following:

-- Prohibit the formation of a health care corporation in Michigan after the bill took effect.
-- Authorize Blue Cross Blue Shield of Michigan (BCBSM) to establish, own, operate, and merge with a nonprofit mutual disability insurer, upon adoption of a plan of merger by the boards of directors of both BCBSM and the nonprofit mutual disability insurer and approval of the plan by the Commissioner of the Office of Financial and Insurance Regulation.
-- Require BCBSM to include in the merger plan that, beginning in April 2014, the surviving entity of the merger would use its best efforts to make annual social mission contributions in an aggregate amount of up to $1.56 billion over a period of up to 18 years to a proposed Michigan Health Endowment Fund.
-- Provide that the merger would be the dissolution of BCBSM, and the surviving nonprofit mutual disability insurer would assume the performance of all BCBSM contracts and policies.
-- Prohibit BCBSM from using or enforcing a "most favored nation" clause in any provider contract, beginning February 1, 2013, unless the clause were approved by the Commissioner.
-- Prohibit BCBSM from using or enforcing a most favored nation clause, beginning January 1, 2014.
-- Require BCBSM to take certain actions before discontinuing a plan or product in the nongroup or group market, or discontinuing all coverage in that market.
-- Prohibit BCBSM from issuing plans in the group or nongroup market for five years after withdrawing from that market.
-- Require BCBSM to offer health care benefits to all Michigan residents, regardless of health status, until January 1, 2014.
-- Require the premium for a BCBSM group conversion certificate to be determined only by using rating factors prescribed by the Insurance Code (as provided in Senate Bill 62).
-- Beginning January 1, 2014, require BCBSM to establish and maintain a provider network that satisfied Federal network adequacy requirements.
-- Provide that a BCBSM certificate issued or renewed on or after January 1, 2014, would be subject to the certificate issuance and rate filing requirements of the Insurance Code.
-- Allow BCBSM to establish reasonable open enrollment periods, subject to the Commissioner's approval, for certificates offered or renewed in Michigan, beginning January 1, 2014.
-- During an open enrollment period, prohibit BCBSM from denying or conditioning the issuance or effectiveness of a certificate or discriminating in its pricing on the basis of health status, claims experience, receipt of health care, or medical condition.
-- Increase from 10% to 30% the amount of a premium rebate BCBSM may offer for group and nongroup wellness coverage, and allow a larger rebate with the Commissioner's approval.

The bill also would create the Michigan Health Endowment Fund Board and require it to incorporate the Fund under the Nonprofit Corporation Act. The Fund would be organized to receive and administer funds for the public welfare. The Governor would have to appoint the Board with the advice and consent of the Senate. The Fund's purpose would be to benefit the health and wellness of minor children and seniors throughout the State with a significant focus in the following areas: infant mortality, wellness and fitness programs, access to healthy food, technology enhancements, health-related transportation needs, and foodborne illness prevention. The Fund could award grants for projects that would promote its purposes. The bill also would do the following:

-- Prohibit the Board from disbursing Fund money to subsidize the cost of individual Medigap coverage, except to those who demonstrated a financial need through a means test developed by the Commissioner.
-- From January 1, 2016, through December 31, 2021, require the Board to disburse $120.0 million to subsidize Medigap coverage.
-- Establish an 18-year schedule for the expenditure of Fund money.
-- Once the accumulated principal in the Fund reached $750.0 million, require the Board to maintain that amount for investment to provide an ongoing income to the Fund.

<u>Senate Bill 62</u> would amend the Insurance Code to do the following:

-- Authorize the formation of a nonprofit domestic mutual insurer.
-- Allow BCBSM to merge with a nonprofit mutual disability insurer, and require the resulting insurer to continue as a nonprofit entity and provide coverage to the individual and small group health markets.
-- Prohibit a nonprofit domestic mutual insurer formed under the bill from converting its status to a stock insurer or reorganizing.
-- Require the nonprofit mutual disability insurer to offer supplemental coverage to Medicare enrollees as provided under Senate Bill 61, at the same rates as offered to subscriber by BCBSM on the bill's effective date.
-- Allow a nonprofit mutual disability insurer to permit entities holding administrative services agreements with it to be members with voting rights.
-- Prohibit a member of the nonprofit mutual disability insurer from having an interest in, or residual rights to, the insurer's assets; receiving surplus dividends; and being required to pay capital assessments by the insurer.
-- In the event of the insurer's dissolution or winding up, require any residual value to be distributed for the benefit of the people of Michigan to the proposed Fund.
-- Require the nonprofit mutual disability insurer to offer health care benefits to all Michigan residents regardless of health status, until January 1, 2014.
-- Eliminate a prohibition against BCBSM's ceasing to renew all small employer group health benefit plans in a geographic area.
-- Allow the Commissioner to extend the time period in which he or she may disapprove an individual or family disability insurance policy form by up to 30 days if he or she gave the insurer written notice.
-- Require the Commissioner to establish minimum standards for the frequency and duration of open enrollment periods, and apply them uniformly to all insurers.
-- For a policy or certificate issued or renewed on or after January 1, 2014, require the premium rate charged by an insurer, HMO, or BCBSM in the individual or small group market to based only on the following factors: whether the policy or certificate covered an individual or family; the rating area; age, except that the rate could not vary by more than three to one for adults for all plans other than child-only plans; and tobacco use, except that the rate could not vary by more than 1.5 to one.
-- Require premiums for a small employer health benefit plan to be determined only by use of those rating factors.
-- Prohibit premiums charged by BCBSM or an HMO for a plan to small employers or sole proprietors in a given geographic area from varying from the index rate for that plan by more than 45%.

-- Provide that benefits paid by the nonprofit mutual disability insurer to an insured or provider that were not cashed within a prescribed time period would escheat to the State.

Also, if the insurer's status as a nonprofit mutual disability insurer were changed, or if the insurer disposed of its assets, moved to another state, or allowed another person or group to beneficially own more than 50% of the voting power, the bill would require the insurer or the acquiring person or entity to pay the Fund an amount equal to the greater of the acquisition price or the fair market value of the insurer and its subsidiaries.

In addition, the bill would add language applicable to insurers and HMOs similar to that in Senate Bill 61 regarding the following:

-- Discontinuation of a plan or product, or of all coverage, in the nongroup, group, or small employer market.
-- The use or enforcement of most favored nation clauses.
-- Premium rebates for wellness coverage.
-- The establishment and maintenance of adequate provider networks.

The bills are tie-barred.

MCL 500.2213b et al. (S.B. 1293) Legislative Analyst: Julie Cassidy
550.218 et al. (S.B. 1294)

FISCAL IMPACT

The bills would have an indeterminate impact on the finances of State and local governments. The bills would allow Blue Cross Blue Shield of Michigan to merge with a nonprofit mutual health insurance company and therefore become subject to applicable State taxes. In its fiscal year 2010-11 annual financial report, BCBSM reported about $9.6 billion in underwritten premiums. Under the Income Tax Act, other insurance companies pay a 1.25% tax on premiums earned. Had BCBSM been required to pay tax on those premiums in fiscal year 2010-11, it would have resulted in approximately $120.0 million in additional income tax revenue. The Income Tax Act does, however, allow for various credits to an insurance company's income tax liability for other taxes paid. It is unknown what BCBSM's credits would have been, but they would have reduced that $120.0 million figure by some unknown amount.

The bills refer to payments by BCBSM to support health care, but neither bill specifies the amount of the proposed payments. The bills could create a board to disburse this money, but the disbursement would not be subject to the appropriations process.

The bills also could have some impact on the cost and types of plans offered by State and local governments. It is unknown at this time what those effects might be and how easily they could be attributed to a reorganization of BCBSM.

It is not expected that the bills would result in any additional cost to the Department of Licensing and Regulatory Affairs, as the Department's regulatory responsibilities toward BCBSM as a nonprofit mutual insurer would be largely the same as they are today toward BCBSM as it is currently organized.

Date Completed: 1-29-13 Fiscal Analyst: Steve Angelotti
Josh Sefton

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