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BILL ANALYSIS

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Senate Bill 1014 (as introduced 5-16-18)
Sponsor: Senator Joe Hune
Committee: Insurance

Date Completed: 6-6-18

CONTENT

The bill would amend the Insurance Code to do the following:

- Describe when a rate for automobile insurance would be excessive, inadequate, or unfairly discriminatory, and prohibit such rates.
- Provide for the creation of an incorporated association to accept liability for ultimate loss sustained under personal protection insurance coverages above \$545,000, and require that amount to be adjusted biennially by changes in the Consumer Price Index.
- Provide for the dissolution of the existing Michigan Catastrophic Claims Association (which would be called the Michigan Legacy Claims Association once the incorporated association was issued a certificate of authority) after all liabilities had been paid.
- Set limits on the amount that could be paid by personal protection insurance benefits for attendant care.
- Limit the amount that an insurer or incorporated association could be required to pay a person or institution for products, services, and accommodations, to the average amount the person or institution customarily accepted from all sources, not including cases involving personal protection insurance, Medicaid, or Medicare.
- Appropriate \$150,000 from the General Fund to the Department of Insurance and Financial Services for it to compile a report on the effect of the changes made by the bill.
- Create the Michigan Automobile Insurance Fraud Authority within the Michigan Automobile Insurance Placement Facility, to provide financial support to law enforcement and prosecutorial agencies to combat auto insurance fraud.
- Authorize the board of the Facility, until December 31, 2022, to collect from participating members and self-insurers money paid at their discretion to cover costs of the proposed Authority and the Automobile Theft Prevention Authority.
- Terminate the proposed Authority on December 31, 2022, and require it to transfer its assets to the Department of State Police for the benefit of the Automobile Theft Prevention Authority.

Rates for Automobile Insurance

The bill would prohibit rates for automobile insurance from being excessive, inadequate, or unfairly discriminatory. A rate would be excessive if it were likely to produce a profit that was

unreasonably high in relation to the risk involved or if the cost of the insurance were unreasonably high in relation to services rendered. A rate would be inadequate if it were clearly insufficient (when combined with the investment income attributable to the rate) to sustain projected losses and expense, or if allowed discounts or credits to the premium charged exceeded a reasonable reflection of expense savings and reasonably expected loss experience from the risk. A rate would be unfairly discriminatory as to a risk if the application of premium discounts, credits, or surcharges to the risk did not bear a reasonable relationship to the expected loss and expense experience.

MCCA/Legacy Association; Incorporated Association

The Michigan Catastrophic Claims Association (MCCA) was created as an unincorporated, nonprofit association under the Insurance Code. The MCCA has a five-member board of directors appointed by the Director of the Department of Insurance and Financial Services (DIFS). The board is composed of individuals from Association members. All automobile insurers are required to be members of the MCCA and to pay premiums to the Association so that it may provide indemnification for ultimate loss sustained under personal protection insurance coverages above certain amounts. Michigan law requires all drivers to carry personal protection insurance that covers all reasonable charges incurred for reasonably necessary products, services, and accommodations for the care, recovery, or rehabilitation of a person injured in an auto accident. There is no upper limit on an insurer's liability for this coverage. The MCCA reimburses insurers for the payment of claims that exceed specified amounts.

The bill would allow two or more voting directors of the "unincorporated association" (the existing MCCA) to form an incorporated association by filing articles of incorporation with the DIFS Director. The Director could not certify more than one incorporated association to be active and operate in the State at a time. Within 90 days after the DIFS Director certified the articles of incorporation, the incorporated association would have to file with the Director an application for a certificate of authority. If the Director were satisfied that the incorporated association could comply with applicable law, the Director would have to issue it a certificate of authority to commence claims activities. At that time, the Director would have to establish the initial catastrophic claims assessment to be assessed by the incorporated association.

The new incorporated association would have a seven-member board appointed by the Governor with the advice and consent of the Senate. An employee or officer of an insurer would not be eligible to serve as a director. The new association would be subject to an annual audit by an independent public accountant, and would have to comply with the Freedom of Information Act. The board of the incorporated association would have to conduct its business at a meeting that was open to the public. The bill specifies that the State would not be liable for obligations of the association, and any debt of the association would not be a debt of the State.

The new incorporated association would collect the catastrophic claims assessment from drivers, instead of collecting premiums from insurers as the MCCA does. The assessment would still be collected with the insured's regular premium payment, but would not be part of an insurer's premium and would have to be listed separately on the invoice. If an insurer received a refund from the incorporated association for a portion of an assessment paid because of the cancelation of a policy, it would have to refund that portion to the owner or registrant.

The bill states that neither the unincorporated association nor the incorporated association would be an insurer, and neither would be subject to any Michigan laws with respect to insurers. Also, the incorporated association would not be required to participate in a pool or fund in which an insurer is required to participate.

The unincorporated association would continue to reimburse insurers for ultimate loss above \$530,000 (as provided by current law) for policies issued or renewed between July 1, 2013, and June 30, 2015. For policies issued or renewed between July 1, 2015, and the first June 30 after the Director issued a certificate of authority to the association, the amount would increase to \$545,000. The legacy unincorporated association would not be liable to reimburse for claims under policies issued (and would be prohibited from collecting premiums from member insurers) after the first June 30 after the DIFS Director issued a certificate of authority to the new association. The MCCA would be called the Michigan Legacy Claims Association if an incorporated association were issued a certificate of authority. After all existing liabilities were paid, the Legacy Claims Association would have to transmit any remaining money to the incorporated association and the legacy association would be dissolved.

The new incorporated association would be responsible for 100% of all liability for ultimate loss sustained within the scope of personal protection insurance coverages and claims expenses in excess of \$545,000 for policies issued after the first June 30 after the DIFS Director issued a certificate of authority to the new association. Rather than reimbursing member insurers for claims, the incorporated association would take over the administration and payment of claims for which it was liable.

The \$545,000 amount, and each subsequent adjusted amount, would have to be adjusted biennially on the second July 1 after the prior adjustment, by the lesser of 6% or the cumulative change in the Consumer Price Index for the 24 months before the July 1 effective date of the adjustment, and rounded to the nearest \$5,000. An adjusted amount would apply to motor vehicle accident policies issued or renewed on or after the effective date of the adjustment and before July 1 of the second following year.

Limits on Payments

The bill would limit the amount that would be paid for attendant care by personal protection insurance benefits. For attendant care provided in the home by a family or household member, payment would be limited to \$15 per hour, regardless of the level of care. Beginning three years after the bill's effective date, and then every three years, the DIFS Director would have to adjust the amount by the aggregate percentage change in the United States Consumer Price Index, rounded to the nearest 10 cents. The limitation would apply regardless of whether the family or household member was licensed or otherwise authorized to provide attendant care, or was employed by, or under contract with, or in any way connected with an individual or agency licensed or authorized to render the care.

For attendant care provided in the home by someone other than a family or household member, payment would be limited to a total of 24 hours per day for services performed by one or more individuals. Payment for attendant care provided by a family or household member and someone other than a family or household member would be cumulatively limited to 24 hours per day.

Notwithstanding these limits, an insurer or the incorporated corporation could contract to provide for attendant care at any rate and for any number of hours per week. Also, an injured person or that person's representative would be allowed to request a medical review to determine the care and treatment requirements of the patient. If the review determined that the patient required more attendant care than was allowable under the bill, the additional care would be considered an allowable expense.

The bill would allow an insurer or the incorporated association to negotiate reimbursement amounts for products, services, and accommodations, if the insurer or association did not

agree with the amount charged by a person or institution providing treatment to an injured person. If the parties were unable to reach an agreement, the insurer or association would not be required to pay an amount that exceeded the average amount the person or institution customarily accepted from all sources for like products, services, and accommodations in cases not involving personal protection insurance, Medicaid, or Medicare.

Report to Standing Committees; Appropriation

Before July 1, 2019, the Director of the Department would have to report to the standing committees of the Senate and the House of Representatives with primary jurisdiction over insurance matters. The report would have to detail the effect of the changes to the Insurance Code made by the bill, and contain any recommendation of the Director for changes to be made.

For the 2016-17 fiscal year, the bill would appropriate \$150,000 from the General Fund to DIFS to create the report, including hiring an additional full-time employee to prepare the report.

Automobile Insurance Fraud Authority

The bill would create the Michigan Automobile Insurance Fraud Authority within the Michigan Automobile Insurance Placement Facility. The facility's board of governors would have to amend its plan of operation to establish procedures necessary to make assessments for and to carry out the administrative duties and functions of the Authority. The bill specifies that the Authority would not be a State agency; however, the Authority would have to comply with the Freedom of Information Act and conduct its business at meetings that were open to the public.

Until December 31, 2022, the board of the Facility could collect from participating members and self-insurers money paid at their discretion to cover costs of the proposed Authority and the Automobile Theft Prevention Authority. Any money paid to the proposed Authority could not come from premium revenue, but would have to be paid from other earnings or investments. A member or self-insurer would be prohibited from considering the payment of money to the Authority when calculating a premium rate.

The duties and powers of the Automobile Insurance Fraud Authority would have to be carried out by a 15-member board of directors, which would consist of members specified in the bill. Board members would have to serve without compensation but the board would have to reimburse a member for necessary travel and expenses. The board would be dissolved on January 1, 2023.

The bill also would require automobile insurers to report automobile insurance fraud data to the Authority. In addition, the Department of State Police would have to provide available motor vehicle fraud and theft statistics to the Authority on request.

The Authority would be required to provide financial support to State or local law enforcement and prosecutorial agencies for programs designed to reduce the incidence of auto insurance fraud.

The Authority also would have to prepare and publish an annual financial report, as well as an annual report to the Legislature on the Authority's efforts to prevent auto insurance fraud and the cost savings that resulted from those efforts. The reports would have to detail insurance fraud occurring in the State for the previous year, assess the impact of the fraud on rates charged for automobile insurance, summarize prevention programs, and outline allocations made by the Authority. The Authority also would have to evaluate the impact auto

insurance fraud had on the residents of the State and the costs they incurred through insurance, police enforcement, prosecution, and incarceration due to that fraud.

The Authority would be dissolved on January 1, 2023. It would have to transfer all assets to the Department of State Police for the benefit of the Automobile Theft Prevention Authority before that date.

MCL 500.2109 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

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

Fiscal Analyst: Elizabeth Raczkowski

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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.