

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

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 235 (as introduced 2-27-03)  
Sponsor: Senator Bruce Patterson  
Committee: Health Policy

Date Completed: 3-5-03

## **CONTENT**

The bill would create the "Small Employer Health Market Reform Act" to govern the rates charged to small employers (sole proprietors or employers of fewer than 100 employees) for health benefit plans. The bill would do the following:

- Allow small employer carriers to establish up to 10 geographic areas in the State for use in adjusting rates.
- Provide that the premiums charged for a health benefit plan to small employers in a geographic area could not vary by more than 25% from the "index rate" for that plan in a rating period.
- Provide that only "case characteristics" could be used to determine the rate differentials within a geographic area for a small employer.
- Allow additional premiums for employers that had been self-insured and for sole proprietors.
- Limit the rate increase in a geographic area for a new rating period to the sum of an annual percentage adjustment in the rating index (which could not exceed 15%) plus an adjustment due to an employer's case characteristics.
- Authorize the Commissioner of the Office of Financial and Insurance Services (OFIS) to suspend the rate requirements for a carrier due to its financial condition, or to enhance marketplace efficiency and fairness.
- Allow a carrier to deny coverage to a small employer that failed to meet the carrier's minimum participation rules.
- Require coverage to be renewable except for specific reasons, unless a carrier ceased to renew all health benefit plans in a geographic area.

- Require carriers to disclose certain information in solicitation and sales materials.
- Require carriers to maintain a description of their rating and renewal underwriting practices.

("Index rate" would mean the arithmetic average of the premium rates in a health benefit plan for all small employers located in a geographic area. "Case characteristics" would mean industry, age, gender, group size, claim experience, participation, health status, and wellness (health promotion program) of a small employer that a carrier considered in determining premium rates for the small employer.)

### Application of the Act

The proposed Act would apply to any health benefit plan providing coverage to a sole proprietor or one or more employees of a small employer. It would not apply, however, to individual health insurance policies subject to policy form and premium rate approval by the OFIS Commissioner.

"Small employer" would mean any person, firm, corporation, partnership, limited liability company, or association actively engaged in business that, on at least 50% of its working days during the prior calendar year, operated as a sole proprietor or employed 99 or fewer eligible employees. "Sole proprietor" would mean an individual who was a sole proprietor or sole shareholder in a trade or business through which he or she earned at least 50% of his or her taxable income and for which he or she had filed the appropriate Internal Revenue Service form for the previous taxable year. A sole proprietor would have to be a resident of Michigan and actively employed in

the operation of the business, working at least 30 hours per week, at least 40 weeks out of the calendar year.

"Health benefit plan" would mean an expense-incurred hospital, medical, or surgical policy or certificate, nonprofit health care corporation (Blue Cross and Blue Shield of Michigan, or BCBSM) certificate, or health maintenance organization (HMO) contract. The term would not include accident-only, credit, dental, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation or similar insurance; or automobile medical-payment insurance.

#### Health Benefit Plan Rates

Geographic Areas. A carrier could establish up to 10 geographic areas in Michigan for use in adjusting rates for health benefit plans subject to the proposed Act. A geographic area would have to include at least one county. (A carrier would be a health insurance company authorized to do business in this State, BCBSM, an HMO, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to State insurance regulation.)

Premium Rates. The following provisions would apply to premium rates for a health benefit plan subject to the proposed Act.

- 1) The rates charged for a health benefit plan during a rating period to small employers located in a geographic area could not vary from the index rate for that plan by more than 25% of the index rate. Only case characteristics could be used for determining the rate differentials within a geographic area for a small employer.
- 2) For a sole proprietor, a carrier could charge an additional premium of up to 25% above the premium rate described above.
- 3) The percentage increase in the premium rate charged to a small employer in a geographic area for a new rating period could not exceed the sum of the annual percentage adjustment (not more than 15% annually and adjusted pro rata for rating periods shorter than one year) in the area's index rate for the health

benefit plan plus an adjustment due to case characteristics of the small employer. The bill specifies that this provision would not prohibit an adjustment due to change in coverage.

- 4) For a plan issued before the bill's effective date, a premium rate for a rating period could exceed the ranges of the first two provisions, for two years after the bill's effective date.
- 5) For a small employer that had been self-insured for health benefits immediately before applying for a health benefit plan subject to the proposed Act, a carrier could charge an additional premium of up to 50% above the premium rate described in the first provision above.

("Rating period" would mean the calendar period for which premium rates established by a small employer carrier were assumed to be in effect, as determined by the carrier.)

Other Requirements. A carrier could not apply case characteristics to an individual in a small employer group that would result in one or more employees' being charged a higher premium than another employee. A carrier could, however, use health benefit plan options, number of family members, and Medicare eligibility in establishing a small employer's premium.

A small employer carrier would have to apply rating factors, including case characteristics, consistently with respect to all small employers in a geographic area, and would have to bill a small employer group with a composite rate.

Suspension of Requirements. Upon a filing by a small employer carrier, the Commissioner could suspend all or any part of the preceding requirements as to the premium rates applicable to one or more small employers for one or more rating periods, if the Commissioner found either that the suspension was reasonable in light of the carrier's financial condition or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

### Coverage; Enrollment

A small employer carrier would not be required to offer or provide to a sole proprietor all health benefit plans available to small employers that were not sole proprietors. A carrier would have to offer a sole proprietor at least one health benefit plan that provided at least catastrophic coverage and other coverage required by the Commissioner in the best interests of both sole proprietors and small employer carriers.

At least annually, a small employer carrier could apply an open enrollment period for sole proprietors that was at least one month long.

A small employer could exclude or limit coverage for a condition only if the exclusion or limitation related to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within six months before enrollment and the exclusion or limitation did not extend for more than six months after the effective date of the health benefit plan.

### Minimum Participation Rules

A small employer carrier could deny coverage to a small employer that failed to enroll enough of its employees to meet the minimum participation rules established by the carrier pursuant to sound underwriting requirements. Such a rule could require a small employer group to enroll a certain number or percentage of employees with the carrier as a condition of coverage.

A minimum participation rule for a small employer of six or more employees could not require enrollment of more than 75% of the employees who were receiving health care coverage from the employer. A minimum participation rule for a small employer of fewer than six employees could require enrollment of up to 100% of the employees who were receiving health care coverage from the employer.

### Renewal

A health benefit plan subject to the proposed Act would have to be renewable to all eligible employees and dependents at the option of the small employer, except for any of the following reasons:

- Nonpayment of required premiums.
- Fraud or misrepresentation of the small employer or, for coverage of an insured individual, fraud or misrepresentation by the individual or his or her representative.
- Violation of participation or contribution rules.
- Movement outside the geographic area.
- Termination of association membership if the coverage were made available only through a bona fide association.

If a small carrier ceased to renew all health benefit plans in a geographic area, the carrier would have to notify all affected small employers and the Commissioner at least 90 days before coverage terminated. The carrier could not subsequently provide health care benefits under the proposed Act without the Commissioner's prior approval.

#### Disclosure

Each small employer carrier would have to make reasonable disclosure in solicitation and sales materials given to small employers of all of the following:

- The extent to which premium rates for a specific small employer were established or adjusted due to case characteristics of the employees or dependents.
- The provisions concerning the carrier's right to change premium rates and the factors, including case characteristics, that affected changes in rates.
- The provisions related to renewability of coverage.

#### Description of Practices

Each small employer carrier would have to maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation demonstrating that its rating methods and practices were based upon commonly accepted actuarial assumptions and were in accordance with sound actuarial principles.

Every March 1, each small employer carrier would have to file with the Commissioner an actuarial certification that the carrier was in compliance with this requirement and that its

#### S0304\S235sa

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.

rating methods were actuarially sound. The carrier would have to keep a copy of the certification at its principal place of business.

A small employer carrier would have to make this information and documentation available to the Commissioner upon request. The information would be considered proprietary and trade secret information and would not be subject to disclosure by the Commissioner to people outside of OFIS except as agreed to by the carrier or as ordered by a court.

#### Effective Date

The proposed Act would apply to each health benefit plan for a small employer that was delivered, issued for delivery, renewed, or continued in this State on or after the bill's effective date. For this purpose, the date a plan was continued would be the first rating period beginning on or after the bill's effective date.

#### Tie-Bar

The bill is tie-barred to Senate Bill 234, which would amend the Nonprofit Health Care Corporation Reform Act to provide for revisions in BCBSM's rates and reserves.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

Together with Senate Bill 234, 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.

While Senate Bill 235 most likely would have an impact on the availability of commercial small group health coverage plans, it should have no direct fiscal impact on State and local spending for publicly funded health programs.

Fiscal Analyst: Maria Tyszkiewicz  
John Walker