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BILL ANALYSIS

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House Bill 5235 (Substitute S-1)
Sponsor: Representative Barb Byrum
House Committee: Insurance
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 11-3-09

CONTENT

The bill would amend Chapter 38 (Medicare Supplemental Policies and Certificates) of the Insurance Code to revise requirements pertaining to Medicare supplemental insurance policies (also called Medigap policies). The bill would do all of the following:

- **Establish new Medigap policy standards that would apply to all Medicare supplement policies or certificates delivered or issued for delivery with an effective date on or after June 1, 2010.**
- **Specify that current Medigap policy standards would apply only to Medicare supplement policies or certificates delivered or issued for delivery on or after June 2, 1992, with an effective date for coverage before June 1, 2010.**
- **Eliminate certain Medicare supplement plans and add others.**
- **Eliminate requirements for at-home recovery benefits and include a new hospice-care benefit as a core benefit in every Medigap plan.**
- **Establish requirements for a "2010 standardized Medicare supplement benefit plan" and the exchange of a "1990 standardized Medicare supplement benefit plan" for a 2010 standardized plan.**
- **Specify that an insurer would not have to justify to the Commissioner of Financial and Insurance Regulation if the insured replaced a 1990 plan with a 2010 plan.**
- **Prohibit an insurer from applying new preexisting condition limitations or a new incontestability period to a new Medigap policy for benefits contained in the exchanged 1990 standardized policy, but allow preexisting condition limitations of up to six months on any added benefits contained in a new 2010 standardized policy.**

The bill is tie-barred to Senate Bill 744, which would amend Chapter 38 to restrict a Medigap insurer's use of genetic information.

The bill would define "1990 standardized Medicare supplement benefit plan", "1990 standardized benefit plan", or "1990 plan" as a group or individual policy of Medicare supplement insurance issued on or after June 2, 1992, with an effective date for coverage before June 1, 2010, including Medicare supplement insurance policies and certificates renewed on or after that date that are not replaced by the issuer at the request of the insured.

The bill would define "2010 standardized Medicare supplement benefit plan", "2010 standardized benefit plan", or "2010 plan" as a group or individual policy of Medicare supplement insurance with an effective date for coverage on or after June 1, 2010.

The bill is described below in further detail. (The Medicare program and supplement policies are described under **BACKGROUND**.)

Medicare Supplement Plans & Policies

The bill proposes reforms required by Federal law, based on model legislation developed by the National Association of Insurance Commissioners (NAIC). It generally specifies that current Medigap policy standards would apply to Medicare supplement policies or certificates delivered or issued for delivery on or after June 2, 1992, with an effective date for coverage before June 1, 2010.

The bill would establish new Medigap policy standards (largely consistent with the current standards) that would apply to all Medicare supplement policies or certificates delivered or issued for delivery with an effective date for coverage on or after June 1, 2010. The proposed standards generally would differ from the current standards in that the proposed standards would not include requirements for prescription drug benefits (which are now available under Medicare Part D). The bill also would eliminate from Medigap requirements Plans H, I, and J (which contain prescription drug benefits) and Plan E (which essentially would be identical to Plan D (after the preventive care and at-home recovery benefits were removed, pursuant to the Federal requirements).

The bill also would create a new Plan M and Plan N for Medigap policies, giving consumers additional options for Medicare supplement policies. Plan M would have increased cost-sharing (50% coverage of the Medicare Part A deductible, and no coverage for the Part B deductible) and Plan N would use a new copay structure ($10 copay for physician visits, and $50 copay on emergency room visits) with no coverage for the Medicare Part B deductible.

In addition, the bill would eliminate requirements for at-home recovery benefits, which are offered by some of the Medigap plans, and include a new hospice-care benefit as a core benefit to every Medigap plan. It also would increase from 80% to 100% the Medicare Part B excess benefit required in Medigap Plan G.

Chapter 38 includes forms illustrating the benefits and coverages for each Medigap plan. The bill would revise those forms to reflect the changes discussed above.

Exchange of Medigap Plans

Under the bill, if an insurer made a written offer to Medicare supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from his or her 1990 standardized plan to a 2010 standardized plan, the offer and subsequent exchange would have to comply with the requirements described below.

An insurer would not have to provide justification to the Commissioner of Financial and Insurance Regulation if the insured replaced a 1990 standardized policy or certificate with an issue age rated 2010 standardized policy or certificate at the insured's original issue age and duration. If an insured's policy or certificate to be replaced were priced on an issue age rate schedule at the time of that offer, the rate charged to the insured for the new exchanged policy would have to recognize the policy reserve buildup, due to the prefunding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer would have to be filed with the Commissioner.

The rating class of the new policy or certificate would have to be the class closest to the insured's class of the replaced coverage.

An insurer could not apply new preexisting condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 standardized policy or certificate of the insured, but could apply preexisting condition limitations of not more than six months to any added benefits contained in the new 2010 standardized policy or certificate not contained in the exchanged policy.

The new policy or certificate would have to be offered to all policyholders or certificate holders within a given plan, unless the offer or issue would violate State or Federal law.

MCL 500.3801 et al.

BACKGROUND

Medicare

According to the U.S. Department of Health and Human Services (HHS) website, people who are at least 65 years old, people under age 65 with certain disabilities, and people of all ages with end-stage renal disease are eligible for Medicare. There are two tracks within the Medicare system under which most people receive coverage. The Original Medicare plan consists of hospital benefits under Part A, medical benefits under Part B, prescription drug coverage under Part D, and a Medigap policy. Medicare Advantage, called "Part C", combines Part A and B benefits and includes prescription drug coverage under Part D.

Medigap Policies

Medicare supplement insurance policies are sold by private insurance companies to help cover costs not covered by the Original Medicare plan. Federal and state law prescribes standards that Medigap policies must meet, including specific benefits. Currently, there are 12 different standardized Medigap policies (Plans A through L). Enrollees generally must pay a monthly premium for their Medigap policies, in addition to any premiums for coverage under Medicare Parts A and B.

Medicare Modernization & NAIC Medigap Model Regulations

Congress has established minimum Federal standards that the NAIC has incorporated into its Medigap model regulation. As long as a state's Medigap regulations meet or exceed the Federal minimum standards, the state may retain its jurisdiction over Medigap regulation.

Medigap plans were standardized nationwide in 1990 into a uniform set of benefit plan packages. Upon the enactment of the Federal Medicare Modernization Act in 2003, which created a voluntary Medicare out-patient prescription drug benefit (Medicare Part D), Congress encouraged the NAIC to modernize the 1990 Medigap benefit packages. The NAIC subsequently developed new standard plans in a revised Medigap model regulation. In 2008, Congress passed the Medicare Improvements for Patients and Providers Act (MIPPA), which directed the Secretary of the HHS to implement the NAIC Medigap model regulations, as amended by Congress, to meet additional Medigap standards established in MIPPA and in the Federal Genetic Information Nondiscrimination Act, which also was enacted in 2008.

In September 2008, the NAIC approved amendments to its Medigap model regulations, to reflect the Federal requirements, and states must incorporate these new Federal standards into their laws and regulations. The earliest effective date for coverage under a 2010 standardized plan policy meeting the new Federal requirements is June 1, 2010. The date

also is the cut-off date for carriers issuing policies with the 1990 standardized benefit packages.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. It would bring the State into compliance with current Federal regulations regarding Medicare supplement insurance policies. Staff from the Office of Financial and Insurance Regulation have indicated that states that fail to come into compliance with revised Federal law on these policies will be subject to Federal regulation of these types of policies.

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