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BILL



ANALYSIS

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Senate Bill 612 (Substitute S-2 as reported)
Senate Bill 613 (Substitute S-2 as reported)
Senate Bill 614 (Substitute S-2 as reported)
Sponsor: Senator Mark C. Jansen
Committee: Health Policy

Date Completed: 1-24-12

RATIONALE

In 2010, the Federal Patient Protection and Affordable Care Act was enacted, and amended by the Health Care and Education Reconciliation Act, to reform the nation's health insurance arena. Among other things, the Act provides for the establishment of state-based exchanges through which qualifying individuals and small businesses may purchase health insurance policies meeting prescribed standards. The Act also establishes tax credits that may be used to defray the cost of purchasing a policy through the exchange. As policy-makers and stakeholders have examined the implications of the Act for Michigan and considered the creation of the State's exchange, insurance coverage for elective abortion has become an issue of considerable discussion. Some people are concerned that taxpayer dollars could be used to subsidize abortion under policies offered through the exchange. With regard to policies purchased outside the exchange, some believe it is unfair that a person who objects to abortion, or who will never undergo the procedure, might have to support the practice through payment of his or her insurance premiums. It has been suggested that coverage for elective abortions should be banned from policies offered through the proposed exchange, and that such coverage under private policies purchased outside the exchange should be available only upon purchase of an additional rider.

CONTENT

Senate Bills 612 (S-2) and 613 (S-2) 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 (S-2) would apply to an insurer and a health maintenance organization (HMO). **Senate Bill 613 (S-2)** would apply to Blue Cross Blue Shield of Michigan (BCBSM).

Senate Bill 614 (S-2) 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.**

The bills would take effect on January 1, 2014. Senate Bill 614 (S-2) is tie-barred to Senate Bills 612 and 613.

Senate Bills 612 (S-2) and 613 (S-2)

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 employer paid the entire premium amount for the rider and 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 (S-2) 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 (S-2) would apply to a BCBSM certificate issued or renewed in Michigan, on or after the bills' effective date.

Senate Bill 614 (S-2)

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 (S-2) and 613 (S-2)).

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)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

People who object to abortion on moral or religious grounds should not have to support the practice through their tax dollars or insurance premiums. Some people consider a woman's choice to terminate a healthy pregnancy a social decision rather than a medical one; as such, elective abortion services should not be included within the scope of basic health care. Reportedly, regardless of their position regarding the legality of elective abortion, many people object to the use of their money to provide coverage for the procedure as part of a standard health insurance policy, whether public or private.

The bills would ensure that no taxpayer dollars were used to fund abortions under policies offered through the proposed exchange. In addition, the bills represent a

fair approach to policies offered outside the exchange: those who desired elective abortion coverage still could obtain it through the purchase of an optional rider, while abortion opponents would not have to help finance something that goes against their conscience. The bills would not prohibit anyone from getting an abortion, but would ensure that individuals did not have to pay for coverage they would not use or for others who opted for the procedure.

Opposing Argument

The bills represent an improper intrusion of government into the decisions of insurance providers and purchasers (both individual and group purchasers), and would restrict negotiations between employers and workers. Employers should be free to choose the benefit packages they wish to offer employees; the State should not establish parameters for these business decisions or dictate how services should be paid for. By prohibiting elective abortion coverage without an extra rider and requiring employers to shoulder the entire cost of such coverage if it were provided, the bills would increase administrative and financial burdens on employers and further drive up insurance costs.

Opposing Argument

The bills would have the effect of limiting access to abortion, increasing emotional and financial hardship for women, and restricting their right to make their own decisions regarding their families and their health. The bills would affect every private insurance policy offered in Michigan, both within and outside of the proposed exchange, and would result in the loss of comprehensive insurance coverage for women. Evidently, most insurance plans include coverage for abortion services currently as part of a broader health care package. The proposed rider for plans offered outside the exchange would be impractical; many people would choose not to purchase it because so few anticipate that they would ever find themselves in a situation in which abortion was a consideration.

Furthermore, the bills' exception to the prohibition would apply only when a woman's life was at risk, disregarding the circumstances under which a continued pregnancy could jeopardize a woman's health or complications necessitated an

abortion. In addition, the bills do not contain an exception for cases of rape or incest. In any case, a woman could be faced with balancing the emotional and health risks of continuing a pregnancy against the financial burden of an abortion, which might be the safest option in certain situations. She might have to pay thousands of dollars out-of-pocket to receive the care she needed, go without because she could not afford it, or resort to dangerous methods to terminate her pregnancy. Ultimately, the bills would have the greatest impact on low-income and otherwise vulnerable women.

The bills also would infringe upon religious freedom and discriminate against women by singling out a service used only by women, and marginalizing it from the comprehensive spectrum of health care. The decision to terminate a pregnancy is a highly personal one. Women should be entitled to make their own choices based on factual scientific information and their own faith and conscience. The government should not limit their options based on some people's religious beliefs. Rather than constructing barriers to legal abortion, efforts to prevent the practice should focus on avoiding unintended pregnancies by improving access to education and health care.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 612 (S-2) and 613 (S-2) 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 (S-2) would direct the Department of Licensing and Regulatory Affairs to investigate violations of Senate Bills 612 (S-2) and 613 (S-2). To the extent that such investigations occurred, the Department would incur indeterminate costs. Those found to be in violation would be subject to a fine 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.