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BILL ANALYSIS

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Senate Bill 288 (Substitute S-3 as reported)
Sponsor: Senator Virgil Smith
Committee: Insurance

Date Completed: 7-20-15

RATIONALE

Studies show that Michigan drivers pay some of the highest automobile insurance rates in the country, and drivers in Detroit pay more than those in the rest of the State. A study conducted in 2012 by the National Association of Insurance Commissioners (NAIC) compared the average amount that residents of each state spent on auto insurance, regardless of what type of vehicle was insured or what type of coverage was purchased. That study found Michigan's residents paying \$1,048.87 per year, the seventh-highest amount in the country, and 28% higher than average. The NAIC further reported that Detroit had the highest rates of all cities in the country, more than twice as high as in New Orleans, the next most-expensive city. The average Detroit resident's annual car insurance cost is reportedly \$3,400, compared to \$1,700 for the surrounding communities. The high cost may be a reason that it is estimated that more than 50% of drivers in the city do not have car insurance.

There are various explanations why insurance rates are so high in Detroit. Some believe that medical costs are a major component. Reportedly, medical costs make up 30% of the nationwide average cost for auto insurance. In comparison, some quotes for Detroit residents show personal injury protection (PIP) insurance making up more than 60% of the premium. Research Council, in 2012, the average frequency and severity of PIP claims in Detroit was twice the frequency and severity in the city's suburbs. Also, providers' claims for reimbursement for medical care related to auto accidents evidently are 24% higher in Michigan than in other states, when holding the amount of care constant. According to the Insurance The higher claims for medical care in Michigan might be attributable to the State's unique requirement for all policyholders to purchase PIP insurance with unlimited lifetime benefits that cover 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, regardless of who was at fault in the accident. Because of the nature of unlimited benefits, some believe that there is not sufficient incentive to contain the cost of care, and that the system is vulnerable to fraud.

For these reasons, some people believe that auto insurers should be allowed to offer a policy that does not provide unlimited PIP benefits. It has been suggested that these policies also could provide post-acute care through limited provider networks, in order to lower costs and reduce the incidence of fraud. Because limited-benefit policies would provide less medical care, they potentially could be offered for lower premiums than charged for current unlimited-benefit policies. In turn, if premiums were lower, it is believed that more people would purchase auto insurance, which would reduce the percentage of drivers without insurance, and lower costs for all policies. Some believe that because of these potential benefits, limited-benefit policies should be offered in all cities in the State with a large percentage of uninsured drivers.

CONTENT

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

- Allow an eligible city to contract with one or more insurers to provide qualifying no-fault policies to its residents.**

- **Specify that an individual insured under a qualifying no-fault policy, his or her spouse, and a relative of either living in the same household, would be limited to the rights under that policy.**
- **Allow a qualifying no-fault policy to limit benefits for critical care to \$250,000 for an individual named in the policy, his or her spouse, or a relative of either living in the same household, and to limit other personal protection benefits to \$25,000.**
- **Allow an injured person to receive benefits under the assigned claims plan after benefits under a qualifying no-fault policy were exhausted, unless he or she was insured under that policy, the spouse of the insured person, or a relative of either living in the same household.**
- **Allow an insurer that provided a qualifying no-fault policy to create a limited provider network and require an injured individual to receive post-acute care through an in-network provider, as well as obtain preauthorization.**
- **Prohibit an insurer from issuing a qualifying no-fault policy unless the individual insured signed a written waiver stating that he or she understood the qualifying no-fault policy offered only limited benefits and not full, unlimited no-fault benefits.**
- **Prohibit the Catastrophic Claims Association from charging a member a premium for a car insured under a qualifying no-fault policy.¹**

The bill would define "eligible city" as a city that either 1) has a population of at least 500,000 and a charter provision allowing it to provide insurance to its residents (i.e., Detroit), or 2) presents credible evidence to the Department of Insurance and Financial Services that at least 35% of the city's residents who regularly operate a motor vehicle do so without the personal protection insurance required by the Code.

Under the Code, personal protection benefits are payable for 1) allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation; 2) loss of income from work an injured person would have performed for three years after the accident; and 3) expenses of up to \$20 per day reasonably incurred in obtaining services that an injured person would have performed for himself or herself or a dependent, for three years after the accident.

Under the bill, a qualifying no-fault policy could limit the total amount of benefits payable under the policy to both of the following:

- \$25,000 for the personal protection benefits described above.
- \$250,000 in the aggregate, payable only for critical care for an individual named in the policy, the individual's spouse, or a relative of either domiciled in the same household, who was injured in a single motor vehicle accident during the policy term.

If a qualifying no-fault policy provided a cap of more than \$25,000 on personal protection benefits other than critical care (for the allowable expenses, work loss, and services described above), the benefits for critical care could be reduced accordingly, if the total benefits available were at least \$275,000.

"Critical care" would mean treatment rendered at an acute care hospital or trauma center immediately following the motor vehicle accident, necessary to save the individual's life or treat life-threatening or permanently disabling injuries, until the individual is stabilized. An individual would be considered stabilized when he or she could be safely discharged or transferred to another acute care hospital or trauma center or to a rehabilitation or other facility, regardless of whether the individual was actually discharged or transferred at that time.

¹ The Catastrophic Claims Association is an unincorporated, nonprofit association to which all Michigan auto insurers are required to belong. The Association reimburses insurers for personal protection insurance claims above a certain threshold (currently \$530,000), and members pay a premium to the Association based on the number of vehicles insured in the State.

A qualifying insurer could contest the charges from an acute-care hospital or trauma center if the insurer could present competent evidence showing that the charges related to post-stabilization services.

The Code requires a person injured in a motor vehicle accident to claim personal protection insurance benefits from insurers in a specified order of priority. Under the bill, these requirements would not apply if the motor vehicle occupied or involved were insured under a qualifying no-fault policy.

If the motor vehicle occupied or involved in an accident were insured under a qualifying no-fault policy, an injured person would be entitled only to the benefits available under that policy. Unless the person was the individual insured, his or her spouse, or a relative of either domiciled in the same household, the injured person could receive benefits from the assigned claims plan after benefits under the qualifying no-fault policy were exhausted.² The same provisions would apply to a person who was injured while he or she was not an occupant and the vehicle involved in the accident was insured by a qualifying no-fault policy, if no personal protection insurance were available to the injured person.

Under the Code, if two or more insurers are in the same order of priority to provide personal protection benefits, the insurer paying benefits due is entitled to partial recoupment from the other insurers in order to accomplish equitable distribution of the loss among the insurers. The bill provides that if one of the motor vehicles involved were insured under a qualifying no-fault policy, the other insurer or insurers would be entitled to recoup only the amount of the qualifying no-fault policy limits that were not otherwise payable because of the accident.

The bill would allow a qualifying insurer (an insurer under contract with an eligible city) to create a limited provider network. Except for emergency services and treatment rendered immediately after a motor vehicle accident and until the individual was stable and could be transferred to an in-network provider, the insurer could require an injured individual under a qualifying no-fault policy to obtain products, treatment, services, accommodations, or rehabilitative or occupational therapy or training from a provider or supplier that was part of the limited provider network. There would be no private right of action for claims arising under or relating to this provision. If the qualifying insurer exhibited a pattern or practice of providing an inadequate network of providers, the Department Director could initiate an appropriate administrative or civil action against the insurer.

A qualifying insurer also could require an injured individual to obtain preauthorization from the insurer for products, treatment, services, accommodations, therapy, or training, except for emergency services rendered until the individual could be transferred to an in-network provider. The insurer would have to grant preauthorization only if medical necessity had been demonstrated. If an insurer required preauthorization and an injured individual, provider, or vendor failed to obtain it, the failure would render a claim for payment void.

A qualifying no-fault policy would have to contain language that prominently disclosed that it was a "qualifying no-fault policy with limited benefits issued under 20__ PA ____", indicating the year of enactment and public act number assigned to the bill.

MCL 500.3101 et al.

² The assigned claims plan is maintained by the Michigan Automobile Insurance Placement Facility, and all automobile insurers in the State are required to participate. The plan is responsible for providing no-fault medical benefits to a person who is injured in an accident involving an uninsured motor vehicle and who has no insurance of his or her own.

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

Limited-benefit no-fault insurance policies would likely be less expensive than those currently offered. A study commissioned by the City of Detroit estimated average savings of between 25% and 45%, depending on whether the insured carried comprehensive and collision coverage. Since the rates for policies for many residents are as high as they are, a reduction in premiums could lead to an increase in the number of drivers who carry the required insurance. That would reduce the likelihood that any driver would be involved in an accident with an uninsured driver, which could bring down the cost of coverage for all drivers.

Supporting Argument

The bill would control medical costs of auto accident injuries by allowing qualifying insurers to create limited provider networks for post-acute care. Auto insurance companies pay more to hospitals and other providers for products, services, and accommodations than is paid by Medicare and Medicaid, worker's compensation insurers, and private health insurers. Part of the reason for this is that no-fault claims represent a relatively small percentage of total health claims, so the auto insurance companies lack the market power to negotiate strong discounts. By creating limited provider networks, qualifying insurers would be in a position to bargain for better rates with hospitals and other medical providers. This is the model used by most health insurance companies. Insurers also would be allowed to require individuals to get preapproval for post-acute care, which could reduce unnecessary treatments and fraud. By reducing medical costs, these provisions could lead to reduced premiums for limited-benefit policies.

Response: Allowing insurers to require preapproval for care and limit the providers an individual would be allowed to see could reduce the quality of care received. An individual should be able to decide which provider is best for his or her treatment, and decisions about what care is medically necessary are best left to individuals and their physicians.

Opposing Argument

The coverage offered by limited-benefit no-fault insurance policies would be substandard. The emergency care in response to a serious accident could easily surpass the proposed \$250,000 limit, especially if the insured's whole family were in the accident, since the limit on emergency care would be an aggregate amount for all individuals covered under the policy. The individual would be responsible for costs above that amount unless they were covered under the insured's health insurance policy, if he or she had coverage. Because of Michigan's unique PIP requirements, however, some health insurers do not provide coverage to Michigan residents for injuries resulting from auto accidents.

Also, many catastrophically injured patients require attendant care or specialized nursing care for long periods of time, even for life. Since most health insurance plans do not cover this type of care, any cost beyond \$25,000 would have to be paid by the injured person, unless he or she carried long-term care insurance (which very few people have). Those who could not afford the care would have to apply for Medicaid, which would increase costs for all taxpayers.

Furthermore, the Insurance Code does not allow a Michigan resident to sue another Michigan resident for economic loss (e.g., medical costs) due to an auto accident. In other states with no-fault insurance, an injured person may sue the at-fault driver for economic damages that exceed the level of PIP benefits. However, since Michigan requires all drivers to carry unlimited PIP benefits, they may not sue for economic damages. The bill would not change that provision in the Code.

Response: When a person drives without PIP coverage, he or she has no claim for benefits in the event of an accident, even if the accident is another driver's fault. Having limited coverage would be much better than having no coverage at all. Limited-benefit policies would allow drivers to purchase as much protection as they wanted or could afford.

Opposing Argument

None of the language in the bill would require auto insurance companies to offer lower rates for policy holders. It is possible that lower costs would lead to higher profits for the insurers, rather than lower payments for drivers.

Response: The limited-benefit policies would be an option for drivers. They would still be allowed to purchase unlimited PIP benefit policies if they did not believe that the savings were great enough to justify the reduction in benefits.

Opposing Argument

Offering limited-benefit policies in Detroit and other qualifying cities could eventually lead to the end of unlimited PIP benefits for all drivers. It is possible that many drivers in the qualifying cities would opt for the less-expensive, limited-benefit coverage, even if they could afford unlimited protection. Likewise, voters in other areas of the State could petition to make the policies available everywhere in Michigan. If more people opted for limited coverage, the cost to provide unlimited coverage to the remaining insureds would be spread over a smaller group, thus increasing the cost per insured. Eventually, the cost could become so large that it would be no longer feasible to offer unlimited PIP protection to anyone.

Legislative Analyst: Ryan M. Bergan

FISCAL IMPACT

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

Fiscal Analyst: Glenn Steffens

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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.