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BILL ANALYSIS



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Senate Bills 1293 and 1294 (as introduced 9-19-12)
Sponsor: Senator Joe Hune
Committee: Insurance

Date Completed: 9-26-12

CONTENT

Senate Bill 1294 would amend the Nonprofit Health Care Corporation Reform Act to do the following:

- Authorize Blue Cross Blue Shield of Michigan (BCBSM) to establish, own, operate, and merge with a nonprofit mutual disability insurer, upon adoption of a plan of merger by the boards of directors of both BCBSM and the nonprofit mutual disability insurer.
- Provide that the merger would be the dissolution of BCBSM, and the surviving nonprofit mutual disability insurer would assume the performance of all BCBSM contracts and policies.
- Require BCBSM to take certain actions before discontinuing a plan or product in the nongroup or group market, or discontinuing all coverage in that market.
- Prohibit BCBSM from issuing plans in the group or nongroup market for five years after withdrawing from that market.
- Allow BCBSM to consider age, geography, smoking, family composition, and other factors in determining premiums, beginning January 1, 2014.
- Require BCBSM to offer health care benefits to all Michigan residents, regardless of health status, until January 1, 2014.
- Provide that a BCBSM certificate issued or renewed on or after January 1, 2014, would be subject to the certificate issuance and rate

filing requirements of the Insurance Code.

- Allow BCBSM to establish open enrollment periods for certificates offered or renewed in Michigan, beginning January 1, 2014.

Senate Bill 1293 would amend the Insurance Code to do the following:

- Authorize the formation of a nonprofit domestic mutual insurer for the transaction of disability insurance.
- Allow BCBSM to merge with a nonprofit mutual disability insurer.
- Prohibit a nonprofit domestic mutual insurer formed under the bill from converting its status to a stock insurer.
- Allow a nonprofit mutual disability insurer to permit entities holding administrative services agreements with it to be members with voting rights.
- Eliminate a prohibition against BCBSM's ceasing to renew all small employer group health benefit plans in a geographic area.
- Require an insurer or health maintenance organization (HMO) to take certain actions before discontinuing a plan or product in the nongroup or group market for disability insurance, or discontinuing all coverage in that market.
- Prohibit an insurer or HMO from issuing plans in a market for five years after withdrawing from that market.

- **Add smoking to the rating factors that BCBSM, HMOs, and commercial carriers may consider in determining premiums for small employers and sole proprietors.**
- **Prohibit premiums charged by BCBSM and HMOs to small employers or sole proprietors in a geographic area from varying by more than 45%, rather than the current 35%, from the index rate for that benefit plan.**
- **Require a small employer carrier to take certain actions before discontinuing a plan or product in the small employer group market.**

The bills are tie-barred.

Senate Bill 1294

Merger with Nonprofit Mutual Disability Insurer

The Nonprofit Health Care Corporation Reform Act prohibits BCBSM from dissolving, merging, consolidating, mutualizing, or taking any other action that results in a change in direct or indirect control of BCBSM. Under the bill, this prohibition would apply except as otherwise provided in Section 220.

The bill would add Section 220 to authorize BCBSM to establish, own, operate, and merge with a nonprofit mutual disability insurer formed under Chapter 58 of the Insurance Code (General Mutual Insurers (Domestic), which Senate Bill 1293 would amend). The surviving entity of the merger would be the nonprofit mutual disability insurer. The insurer formed through the merger would be exempt from the application of Sections 1311 through 1319 of the Insurance Code. (Those sections contain provisions that apply generally to mergers with or acquisitions of domestic insurers.)

The merger would be effective upon adoption of a plan of merger by the majority of the boards of directors of both BCBSM and the nonprofit mutual disability insurer. The directors of BCBSM could serve as incorporators of the corporate body of, directors of, or officers of the insurer formed through the merger.

A merger would be the dissolution of BCBSM, and the surviving nonprofit mutual disability insurer would assume the performance of all BCBSM contracts and policies that existed on the date of the merger. The officers of BCBSM, however, could perform any act or acts necessary to close the affairs of BCBSM after the merger date.

Discontinuation of Coverage by BCBSM

The bill would prohibit BCBSM from discontinuing to offer a particular plan or product in the nongroup or group market unless it did all of the following:

- Gave at least 90 days' advance notice of the discontinuation to the Commissioner of Financial and Insurance Regulation and each individual covered under the plan or product.
- Offered to each covered individual the option to purchase any other plan or product currently being offered in the nongroup market by BCBSM without excluding or limiting coverage for a preexisting condition or providing a waiting period.
- Acted uniformly without regard to any health status factor of enrolled individuals or individuals who could become eligible for coverage, in making the determination to discontinue coverage and in offering other plans or products.

In addition, BCBSM could not discontinue offering all coverage in the nongroup or group market unless it did both of the following:

- Notified the Commissioner and each covered individual of the discontinuation at least 180 days before coverage expired.
- Discontinued all health benefit plans issued in the nongroup or group market from which BCBSM withdrew and did not renew coverage under those plans.

If BCBSM discontinued offering all coverage, it could not provide for the issuance of any health benefit plans in the nongroup or group market from which it withdrew for five years after the date of the discontinuation of the last plan not renewed.

Nongroup Market: Rating Factors

Under the bill, in determining premiums offered in the nongroup market, BCBSM could consider age, geography, smoking, family composition, and any other factors permitted under Federal law for a certificate delivered, issued for delivery, or renewed in Michigan on or after January 1, 2014.

Other Provisions

Until January 1, 2014, BCBSM would have to offer health care benefits to all Michigan residents regardless of health status.

A BCBSM certificate delivered, issued for delivery, or renewed in Michigan on or after January 1, 2014, would be subject to the policy and certificate issuance and rate filing requirements of the Insurance Code.

Beginning January 1, 2014, BCBSM could establish open enrollment periods for certificates offered, delivered, issued for delivery, or renewed in Michigan.

Senate Bill 1294

Nonprofit Mutual Disability Insurer

The Insurance Code provides that Chapter 58 applies only to domestic mutual insurers transacting property, casualty, disability, and other insurances, and to mutual holding companies resulting from the reorganization of those mutual insurers. Under the bill, the chapter also would apply to nonprofit mutual disability insurers.

The bill would authorize the formation with nonprofit status of a domestic mutual insurer for the transaction of disability insurance. A nonprofit mutual disability insurer would have all powers of a mutual insurer organized under Chapter 58 unless expressly reserved. Such an insurer could not convert its status to a stock insurer under Chapter 59 (Conversion of Domestic Mutual Insurer to Domestic Stock Insurer) or reorganize under Chapter 60 (Reorganization of Mutual Insurers).

The bill would allow BCBSM to merge with a nonprofit mutual disability insurer (as set forth in Senate Bill 1294), where the surviving entity was governed by Chapter 58. Such a merger would be exempt from

the application of Sections 1311 to 1319 of the Code.

A nonprofit mutual disability insurer that merged with BCBSM could, at its option, continue to offer any product that was offered to BCBSM's subscribers.

Under Chapter 58, every member of a company is entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as provided in the bylaws. Under the bill, a nonprofit mutual disability insurer could permit entities holding administrative services agreements with it to be members, and could provide in its bylaws the basis for the number of votes the entities would have as members.

General: Discontinuation of Coverage

The bill would add to Chapter 22 (The Insurance Contract) of the Insurance Code provisions similar to those that Senate Bill 1293 would add to the Nonprofit Health Care Corporation Reform Act, regarding the discontinuation of a particular plan or product or all coverage in the group or nongroup market for disability insurance. The provisions under Senate Bill 1294 would apply to an insurer or HMO.

The bill specifies that these provisions would not apply to a short-term or one-time limited duration policy or certificate of no longer than six months

Premiums: Small Employers & Sole Proprietors

Chapter 37 (Small Employer Group Health Coverage) allows an insurance carrier to establish up to 10 geographic areas in the State for the purpose of adjusting premiums for benefit plans. Blue Cross Blue Shield of Michigan must establish geographic areas that cover all of Michigan's counties. The Code specifies factors that may be used to determine premiums within a geographic area for a small employer or sole proprietor located within that area. For BCBSM, only industry and age may be used. For an HMO, only industry, age, and group size may be used. A commercial carrier may use only industry, age, group size, and health status. Under the bill, BCBSM, HMOs, and commercial carriers also could use smoking

to determine premiums for small employers and sole proprietors.

Currently, the premiums charged during a rating period by BCBSM or an HMO to small employers or sole proprietors located in a given geographic area may not vary from the index rate for that benefit plan by more than 35%. The premiums charged by a commercial carrier may not vary from the index rate for that plan by more than 45%. The bill would eliminate the 35% variance limit for premiums charged by BCBSM or an HMO. Instead, premiums charged for these plans issued by BCBSM or an HMO would be subject to the 45% variance limit that applies to plans issued by commercial carriers.

("Index rate" means the arithmetic average during a rating period of the base premium and the highest premium charged per employee for each health benefit plan offered by each small employer carrier to small employers and sole proprietors in a geographic area.)

Small Group Market: Discontinuation of Coverage

Chapter 37 prohibits BCBSM from ceasing to renew all small employer group health benefit plans in a geographic area. The bill would delete this prohibition.

Under the bill, a small employer carrier could not discontinue offering a particular plan or product in the small employer group market unless the carrier did all of the following:

- Notified the Commissioner and each covered individual at least 90 days before the discontinuation.
- Offered to each covered individual the option to purchase any other plan or product currently being offered in the nongroup market by that carrier without excluding or limiting coverage for a preexisting condition or providing a waiting period.
- Acted uniformly without regard to any health status factor of enrolled individuals or individuals who could become eligible for coverage, in making the determination to discontinue coverage and in offering other plans or products.

Mutual Insurer: Use of Name

Under Chapter 50 (Organization of Domestic Stock and Mutual Insurers), the articles of incorporation of a mutual insurer must contain the name by which the incorporation will be known. The name must include the word "mutual". Chapters 50 and 52 (Corporate Powers, Procedures of Stock and Mutual Insurers) also require an insurer to transact its business under its own name. Under the bill, however, a nonprofit mutual disability insurer into which BCBSM was merged or consolidated could retain and use trade names in use by BCBSM before the merger or consolidation.

MCL 500.2213b et al. (S.B. 1293)
550.218 et al. (S.B. 1294)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would have an indeterminate impact on the finances of State and local governments. The bills would allow Blue Cross Blue Shield of Michigan to merge with a nonprofit mutual health insurance company and therefore become subject to applicable State taxes. In its fiscal year 2010-11 annual financial report, BCBSM reported about \$9.6 billion in underwritten premiums. Under the Income Tax Act, other insurance companies pay a 1.25% tax on premiums earned. Had BCBSM been required to pay tax on those premiums in fiscal year 2010-11, it would have resulted in approximately \$120.0 million in additional income tax revenue. The Income Tax Act does, however, allow for various credits to an insurance company's income tax liability for other taxes paid. It is unknown what BCBSM's credits would have been, but they would have reduced that \$120.0 million figure by some unknown amount.

While there has been public discussion of a \$1.5 billion payment by BCBSM over 18 years to the State to support health care, neither bill reflects this proposed payment. Therefore, there is no information on how these annual payments would be used or any information on whether such payments would be subject to the appropriations process.

The bills also could have some impact on the cost and types of plans offered by State and local governments. It is unknown at this time what those effects might be and how easily they could be attributed to a reorganization of BCBSM, though.

It is not expected that the bills would result in any additional cost to the Department of Licensing and Regulatory Affairs, as the Department's regulatory responsibilities toward BCBSM as a nonprofit mutual insurer would be largely the same as they are today toward BCBSM as it is currently organized.

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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.