SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 389 (as enrolled)
Sponsor: Senator William Faust
Senate Committee: Commerce and Technology
House Committee: Insurance

Date Completed: 7-20-90

PUBLIC ACT 170 of 1990

RATIONALE

Under the Insurance Code, when a policy for casualty, disability, or property insurance is canceled by the insured or the insurer, the insurance company's minimum earned premium (the amount the company can keep for issuing the policy) cannot be less than 15% of the total premium payable on the policy or $25, whichever is greater. This means, for example, that if a business insured its office building and contents, and the premium were $10,000 for one year, the insurance company would keep $1,500 (15% of the premium) if the insurance were canceled after two weeks, for whatever reason. Some people feel this places an unfair burden on policyholders, particularly those who pay large premiums (for medical malpractice, for instance). Reportedly, some insurance companies routinely retain minimum earned premiums on a pro rata basis to ease the burden on policyholders; however, the Code does not specifically allow such a practice. It has been suggested that the Code be amended to require that minimum earned premiums be retained on a pro rata basis for cancellation of casualty, disability, or property insurance policies.

Currently, an insurer can file for a rule with the Insurance Commissioner to provide for the minimum retention of insurance premiums for motorcycles, watercraft, off-road vehicles, or snowmobiles. Since persons usually insure such items for only a portion of the year, these policies present special problems with regard to refunds for canceled policies. It has been suggested that insurers be allowed to file for a rule that would allow them to issue short rate premiums for such insurance. Generally, if a short rate premium is canceled, more of the premium can be retained by the insurer during the first two months of the policy than can be retained on a pro rata basis; this allows insurers to cover the costs of issuing policies for short time periods.

Earlier this session, the Legislature made changes in the Insurance Code's regulations covering Medicare supplemental insurance policies, in part to take into account passage of the Federal Medicare Catastrophic Coverage Act of 1988, which expanded the Federal Medicare health insurance program. Congress repealed the Act in 1989, however, apparently in response to angry opposition by intended beneficiaries to the method of financing the expansion. This means that State laws governing Medicare supplemental policies once again do not conform to Federal law. At the same time, insurance specialists say, the Federal government is requiring states to adopt certain Medicare supplemental marketing standards developed by the National Association of Insurance Commissioners aimed at preventing abuses in the sale of such policies to older Americans.

Finally, there have been reports of checks for Medicare supplemental coverage being made out to insurance agents and then not passed on to the companies providing the coverage. It has been recommended that provision be made to require that checks for such policies be made payable to the company providing coverage.

CONTENT

The bill would amend the Insurance Code to require that the minimum earned premium that insurers retain on canceled policies be determined on a pro rata basis; provide for a short rate premium for insurance on certain vehicles; require insurers to refund premiums paid on canceled policies; and bring provisions concerning Medicare supplemental insurance policies into conformance with Federal law. The bill would take effect June 1, 1990.

Insurance Premium

Minimum Earned/Pro Rata Basis

The bill specifies that the minimum earned premium that an insurer could retain on a casualty, disability, or property insurance policy canceled by the insured or the insurer could not be less than the pro rata premium for the expired time or $25, whichever was greater.

Short Rate Premium

The bill would allow an insurer to provide a short rate premium for insurance on motorcycles, watercraft, off-road vehicles, or snowmobiles, provided the insurer filed for a rule with the Commissioner to establish a short rate premium. The rule would have to describe the circumstances under which a short rate could be applied and set forth the amount or percentage to be retained.

Refund Excess Premium

The bill would require that a disability or health insurance policy sent to a person contain a notice that the policyholder could cancel the policy after 10 days (30 days for a disability policy issued to a person eligible for Medicare), and that, in the event of such cancellation, the insurer would have to refund to the policyholder the excess of any paid premium above the pro rata premium for the expired time.

Medicare Supplemental Policies

Content of Policies

The bill provides that if a Medicare supplemental policy or certificate replaced another Medicare supplemental policy, certificate or contract, the replacing insurer would have to waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplemental policy for similar benefits to the extent such time was spent under the original coverage.

Marketing Practices/Duplicative Policies

Each insurer marketing Medicare supplemental insurance coverage in Michigan would be required to do all of the following:

- -- Establish marketing procedures to ensure that any comparison of policies by its agents would be fair and accurate, and that excessive coverage would not be sold or issued.
- -- Make every reasonable effort to determine whether a prospective applicant for Medicare supplemental insurance already had disability or other health coverage and to identify the types and amounts of any such coverage.
- -- Establish auditable procedures for verifying compliance with these requirements.

The bill also would prohibit "twisting" (convincing a person to switch from one policy to another by misrepresentation), high pressure tactics, and cold lead advertising (a method of marketing that fails to disclose that its purpose is to sell insurance and that contact will later be made by an agent or company). Further, the bill would require advertisements for supplemental policies to be filed with the Insurance Bureau at least 45 days before use.

Agents would be required to make reasonable efforts to determine the appropriateness of recommending the purchase or replacement of any Medicare supplemental coverage. Any sale of Medicare supplemental coverage that would provide an individual with more than one Medicare supplemental policy, certificate, or contract would be prohibited.

Application forms for individual Medicare supplemental contracts would have to include questions as specified in the bill that were designed to elicit information as to whether the applicant had another Medicare supplemental policy, contract, or certificate in force or whether a Medicare supplemental contract was intended to replace any disability or other health policy, certificate or contract presently in force. Currently, the form asks only if the purchaser intends to replace an accident or sickness contract with the supplemental contract.

An agent would have to list on the application form for a supplemental contract any other health insurance policies he or she had sold to the applicant, including policies still in force and those sold in the past five years that were no longer in force.

On or before March 1 of each year, every insurer providing Medicare supplemental coverage in Michigan would have to report to the Insurance Commissioner the policy and certificate number and date of issuance for every individual resident of the State for which the insurer had in force more than one Medicare supplemental contract.

Premium Payments

The bill would prohibit an agent from accepting payment of a premium for a Medicare supplemental policy or certificate in the form of a check or money order made payable to the agent instead of the insurer. Further, immediately upon receiving payment of a premium for a Medicare supplemental policy or certificate, the agent would be required to provide a written receipt to the insured.

Exclusions/Long-Term Coverage

Currently, long-term care coverage cannot limit or exclude coverage for illness, treatment or medical conditions except those resulting from certain situations such as war, suicide, and aviation. The bill would delete the aviation exclusion.

Outline of Coverage

The bill would change the form for the "outline of coverage", which explains what Medicare covers and which must be provided to all applicants for a supplemental policy, to:

-- Specify that an insured had 30 days within which he or she could return a supplemental policy for a full refund minus the amount of any benefits received.
-- Delete certain services from the chart of supplemental benefits, including home health services, respite care, catastrophic drug insurance, out-of-pocket maximums, and mammography screening.
-- Specify deductibles and change benefit periods for certain coverages.
-- Require that any policy benefits not mentioned in the outline of coverage chart summary be added to the chart, together with any corresponding Medicare benefits.
-- Require the outline to bear a warning to the buyer that the policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage.

Type I Supplemental Policy

The Act specifies that at a minimum all Medicare supplemental contracts must meet the requirements of a Type I or Type II Medicare supplemental package. A Type I package currently is required to cover, at a minimum, the deductible and copayment requirements of Part A and Part B of the Federal Medicare program, excluding outpatient prescription drug deductibles. The bill would delete "excluding outpatient prescription drug deductibles" and, instead, require that the Type I package cover 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days.

Notices

The bill prescribes in detail the content of the notice that insurers are required to provide to applicants for replacement policies that were not direct response solicitation policies. Further, the bill would change the prescribed content of notices to applicants for replacement policies that are direct response solicitation policies to advise applicants to review the proposed coverage carefully, inform them that the replacement policy may not contain new preexisting conditions or waiting periods, and warn them that omissions or misstatements in the application could cause an otherwise valid claim to be denied.

MCL 500.1207 et al.

FISCAL IMPACT

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

ARGUMENTS

Supporting Argument

Currently, the Code's provisions regarding minimum earned premiums on canceled policies are inflexible and unfair. On one hand, a policyholder, particularly one who pays a sizable amount for insurance, can be subjected to a severe penalty if, for some reason, his or her policy is canceled within a short time from the date of issuance; according to the Code, the insurer keeps 15% of the premium regardless of whether 15% of the time the policy was supposed to cover has elapsed. On the other hand, even if an insurance company wants to issue a refund on a canceled policy, on a pro rata basis, the Code contains no language that allows the company to do so. The bill, by requiring that minimum earned premiums be based on a pro rata calculation, would ensure that policyholders got what they paid for, whether they or the insurance company canceled a policy. The bill would thus encourage consumers to shop around for insurance, without having to worry about losing money in the event they wished to cancel their policy.

Supporting Argument

Allowing an insurer to establish a short rate premium for motorcycles, watercraft, off-road vehicles, or snowmobiles would help insurance companies defray the cost of issuing such policies. Reportedly, some people insure some items with the intention of using them for a couple of weeks and then cancel the policy. A short rate premium would allow an insurer, in the event a policyholder canceled a policy, to retain an amount of the premium that would be greater than the pro rata rate. After a couple of months, the amount an insurer could retain would taper down to approximately the pro rata rate.

Supporting Argument

The bill would put into State statute regulations for Medicare supplemental policies required by the Federal government. The bill reflects the recent repeal of the 1988 expansion of Medicare to cover certain "catastrophic" expenses by modifying the outline of coverage that must be provided to policy applicants. Further, it would bring Michigan into compliance with the Federal requirement that Medicare supplemental marketing standards of the National Association of Insurance Commissioners (NAIC) be adopted by the states.

Supporting Argument

By requiring insurance agents to accept as payment for Medicare supplemental coverage only checks or money orders that are made payable to the company providing coverage and to provide a written receipt to the customer, the bill would help prevent the recurrence of cases in which checks made out to agents were not passed on to insurers with resulting hardships for the customers.

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