Legislative Analysis

HOUSE FISCAL AGENCY

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LONG-TERM CARE INSURANCE REGULATION

House Bill 5349
Sponsor: Rep. Paula K. Zelenko

House Bill 5348
Sponsor: Rep. Kevin Green
Committee: Senior Health, Security, and Retirement

Complete to 2-13-06

A SUMMARY OF HOUSE BILLS 5348 AND 5349 AS INTRODUCED 10-20-05

House Bill 5349 would amend Chapter 39 of the Insurance Code, which deals with long-term care insurance. The following is a general description of key provisions.

** A long term care policy or certificate could not be issued until the insurance company had received from the applicant either (1) a written **designation of at least one other person** who is to receive **notice of lapse or termination** of the policy or certificate for nonpayment of premium; or (2) a written waiver dated and signed by the applicant for the policy electing not to designate such a person. (This would not apply when payment was made through a payroll or pension deduction plan.)

** Long-term care insurers would have to offer applicants the option of purchasing a policy that includes a **nonforfeiture benefit**. The offer would have to be in writing and could be in the form of a rider attached to the policy. If the customer declined the offer, the company would have to provide instead a **contingent benefit upon lapse** available for a specified period of time after a substantial increase in premium rates. The commissioner of the Office of Financial and Insurance Services (OFIS) would have to promulgate rules specifying the type of nonforfeiture benefits to be offered, the standards for such benefits, and the rules regarding contingent benefit upon lapse.

** Generally speaking, a **nonforfeiture benefit** refers to a provision in an insurance policy that grants benefits when a policy lapses so that the equity in the policy to that point is not forfeited. Under the bill, the nonforfeiture benefit would be a shortened benefit period providing paid-up long-term care insurance after the lapse of the policy. The bill describes how the standard nonforfeiture credit is to be calculated. Nonforfeiture benefits could be used for all care and services qualifying for benefits under the terms of the policy, up to the limits specified in the policy. A policy or certificate offered with nonforfeiture benefits would have to contain coverage elements, eligibility, benefit triggers, and benefit length that were the same as coverage issued without nonforfeiture benefits.

** The **contingent benefit upon lapse** would be triggered every time an insurance company increased the premium rates to a level that resulted in a cumulative increase of

the annual premium equal to or exceeding the percentage of the insured's initial premium, based on the insurer's issue age, and the policy lapses within 120 days of the due date of the premium being increased. The bill contains a chart providing the triggers. On or before the date of a substantial premium increase, the insurance company would have to offer to reduce policy benefits so that premium payments are not increased; offer to convert the policy to a paid-up status with a shortened benefit period; and notify the policyholder or certificateholder that a default or lapse during the 120-day period would be considered an election of the offer to convert to paid-up status.

** A long-term care policy would have to allow a policyholder **to reduce coverage and lower the premium** in at least the following ways: by reducing the lifetime maximum benefit; by reducing the nursing facility per diem and reducing the home- and community-based service benefits of a home care-only policy and of a comprehensive policy; or by converting a comprehensive policy to a nursing facility-only policy or a home care-only policy, if the company issues those policies in the state.

** Every insurer or other entity marketing long-term care insurance would have to develop and use **suitability standards** to determine whether the purchase or replacement of long-term care insurance was appropriate for the needs of the applicant; train its agents in the use of the standards and require them to use them; and maintain a copy of the suitability standards and make them available to the OFIS commissioner upon request.

** An insurer would have to **provide applicants with information about rates**, including a statement that the policy may be subject to future rate increases; an explanation of customer options in the event of a rate increase; historical information about premium rate increases over the past ten years; as well as information about current rate schedules.

** At least 30 days prior to making a long-term care policy available for sale, an insurer would be required to provide **rate information** of the kind listed above **to the commissioner of the Office of Financial and Insurance Services**, along with **an actuarial certification**. The actuarial certification would have to consist at minimum of: a statement that the initial premium rate schedule was sufficient to cover anticipated costs under moderately adverse experience and was reasonably expected to be sustainable over the life of the policy without future premium increases; a statement that the policy design and coverage had been reviewed and taken into consideration; a statement that the underwriting and claims adjudication processes had been reviewed and taken into consideration; a complete description of the basis for contract reserves; and a statement that the premium rate schedule is not less than the schedule for existing similar policies available from the company (except for reasonably differences, which would have to be explained).

** An insurance company would have to provide **notice of a pending premium rate schedule increase**, including an "exceptional increase," to the commissioner at least 30 days prior to the notice to policyholders. The notice would have to include: certification by a qualified actuary that if the increase was implemented and the underlying

assumptions realized that no further rate increases would be anticipated; an actuarial memorandum justifying the rate schedule change request; a statement that renewal premium rate schedules were not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification was provided to the commissioner; and sufficient information for review and approval of the rate schedule increase by the commissioner.

** The term **"exceptional increase"** would refer to premium rate increases justified due changes in laws or regulations applicable to long-term care insurance or due to increased and unexpected utilization that affected the majority of insurers marketing similar products. Exceptional increases in rates would have to provide that 70 percent of the present value of projected additional premiums be returned to policyholders in benefits.

** In certain cases, when evaluating a proposed rate increase that was not the first increase for the policy in question, the OFIS commissioner could determine that a **rate spiral** existed. This determination would be based on a review of the lapse rates of policies that had been subject to a previous rate increase. Where "significant adverse lapsation" had occurred, the commissioner could determine that a rate spiral existed.

** Following determination that a rate spiral existed, the commissioner could require the company to offer, without underwriting, to all in force insureds subject to the rate increase, the **option to replace existing coverage** with one or more reasonably comparable products being offered by the insurer or its affiliates. An offer would be subject to the commissioner's approval, have to be based on actuarially sound principles (using attained age), and provide that maximum benefits under any new policy accepted by an insured would be reduced by comparable benefits already paid under the existing policy.

** If the commissioner determined that an insurer had exhibited **a persistent practice of filing inadequate initial premium rates**, the commissioner could prohibit the company from filing and marketing comparable coverage for up to five years or from offering all similar coverages and limiting marketing of new applications to products subject to recent premium rate schedule increases.

** For **each implemented rate increase**, the insurance company would have to file **updated projections annually for the next three years for review and approval by the commissioner**, and would have to include a comparison of actual results to projected values. The commissioner could extend the period to greater than three years if actual results were not consistent with projected values from prior projections. The projection would have to be provided to the group policyholder in lieu of filing with the commissioner when policy insured 250 or more persons and the group was an employer or labor organization group with 5,000 or more eligible employees of a single employer or the group policyholder paid a material portion (at least 20 percent) of the total premium for the group. If any premium rate was greater than 200 percent of the comparable rate in the initial schedule, lifetime projections would have to be filed for review and approval by the commissioner every five years. (As before, the projections

would be provided to the large group policyholder in lieu of filing with the commissioner.)

** A long-term care insurer would have to require that each producer (agent) authorized to solicit individual consumers for the sale of long-term care insurance would have to complete the following **training requirements**, in addition to standard agent training: for producers issued a license on or after April 1, 2006, eight hours of training in the 24-month period prior to first soliciting individual customers for long-term care insurance and eight hours of training in every 24-month period following licensure; and for producers issued a license before April 1, 2006, eight hours of training every 24-month period.

[**Substitute language is anticipated regarding training requirements** that would require producers (agents) licensed after January 1, 2007, to complete eight hours of training (within, not in addition to, the current required initial training) in long-term care insurance topics, and agents licensed prior to that time to take four hours of their required continuing education hours in long-term care insurance topics.]

** The **required training** would have to consist of topics related to long-term care insurance and services, including state regulations and requirements; available services and providers; changes or improvements in services or providers; alternatives to the purchase of long-term care insurance; differences in eligibility for benefits and tax treatment between policies intended to federally qualified and those not intended to be federally qualified; the effect of inflation on eroding the value of benefits and the importance of inflation protection; and consumer suitability standards and guidelines.

House Bill 5348 would amend the Insurance Code to bring long-term care coverage provided by Blue Cross Blue Shield of Michigan under the code. It would repeal the sections dealing with long-term care coverage in the act that governs BCBSM, the Nonprofit Health Care Corporation Reform Act. House Bill 5348 also would include assisted living facilities as a setting where services covered by long-term care insurance could be provided.

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan and its local units of government from the bills as introduced.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.