Legislative Analysis

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LONG-TERM CARE INSURANCE REGULATION

House Bill 5349 (Substitute H-2)
Sponsor: Rep. Paula K. Zelenko

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

First Analysis (2-15-06)

BRIEF SUMMARY: House Bill 5349 would amend Chapter 39 of the Insurance Code, which deals with long-term care insurance, to make a number of amendments that incorporate features of a model act developed by the National Association of Insurance Commissioners. The amendments would add consumer protections, including requiring policies to contain nonforfeiture benefits and contingent benefits to prevent the loss of coverage when policy premiums increase; revise rate-making regulations; and address agent training requirements. House Bill 5348 would bring long-term care coverage provided by Blue Cross Blue Shield of Michigan under the code (and repeal long-term care provisions in the act governing BCMSM), and would specifically include assisted living facilities as a setting where services covered by long-term care insurance could be provided.

FISCAL IMPACT: There would be no significant fiscal impact on the State of Michigan and its local units of government.

THE APPARENT PROBLEM:

Insurance policies that cover long-term care are a relatively new insurance product, little more than two decades old. Michigan first passed laws directly addressing such policies in 1989. To quote from a guide to long-term care insurance produced by the National Association of Insurance Commissioners (NAIC):

Someone with a long physical illness, a disability, or a cognitive impairment (such as Alzheimer's Disease) often needs long-term care. Many different services help people with chronic conditions overcome limitations that keep them from being independent. Long-term care is different from traditional medical care. Long-term care helps one live as he or she lives now; it may not help to improve or correct medical problems. Long-term care services may include help with activities of daily living, home health care, respite care, adult day care, care in a nursing home, and care in an assisted living facility. Long-term care may also include care management services, which will evaluate [a person's] needs and coordinate and monitor the delivery of long-term care services.

Michigan's law governing long-term care insurance policies has not seen substantial amendments in many years. Insurance regulators note that the NAIC adopted new model

legislation on the topic in 2000, but Michigan has yet to adopt that model. Legislation has been introduced that would incorporate provisions regard rate-setting and consumer protections from the 2000 model into Michigan's Insurance Code.

THE CONTENT OF THE BILL:

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.)

** An individual long-term care policy or certificate **could not lapse or be terminated** for nonpayment of premium unless the insurance company gave **at least 30 days' written notice** to the insured and any designee. A policy would have to provide for **reinstatement of coverage** if the company was provided proof that the policyholder was cognitively impaired or had a loss of functional capacity before the grace period expired. The reinstatement option would be available if requested within five months after termination.

** 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.

** For qualified long-term care insurance contracts that are **level premium contracts**, a company would have to offer **nonforfeiture benefits** that (1) are properly captioned; (2)

provide a benefit available in the event of a default in premium payments, with the amount of the benefit permitted to be modified to reflect changes in rates for premium-paying contracts; and (3) provides at least reduced paid-up insurance; extended term insurance; a shortened benefit period; or similar commissioner-approved options.

[An insurance company marketing long-term care insurance could not use the term **"level premium"** or the term "noncancelable" unless the company did not have a right to change the premium for the product being marketed.]

** 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. The customer would choose one of those options. A company could provide additional options.

** 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. A company would have to provide notice of an upcoming premium rate schedule increase at least 45 days prior to the increase.

** An insurer would also have to provide to an applicant 61 years of age or older, or who is disabled, a **current brochure from the state's Medicare/Medicaid Assistance Program** containing information on the availability of free and independent insurance purchasing and public benefits counseling. The company could, in the alternative,

provide the web address where the brochure could be obtained and the telephone number of the agency that could provide the brochure.

** 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).

** If the commissioner determined that the actual experience following a rate increase did not adequately match the projected experience and that current projections under moderately adverse conditions demonstrated that incurred claims would not exceed the proportions of premiums predicted, **the commissioner could require the insurer to implement rate adjustments or other measures** to reduce the difference between projected and actual experience.

** 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 a 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.)

** Each producer (agent) authorized to solicit individual consumers for the sale of long-term care insurance would have to complete eight hours of **training in long-term care** topics during the 24-month period prior to first soliciting individual consumers, (which would be part of, not in addition to, current training requirements). This training would also count toward continuing education required for the first license renewal period after the initial training. In each subsequent renewal period, the need for and amount of additional training in long-term care, as part of mandatory continuing education, would be determined by the producer. (The training requirements are in Chapter 12, which is the chapter that deals with agents, solicitors, adjustors, and counselors

** 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.

** The bill would specify that if the National Association of Insurance Commissioners (NAIC) adopts **a model law, regulation, or guideline that is inconsistent** with Chapter 39, OFIS would have to report in writing to the standing committees of the House of Representatives and Senate on insurance issues within 90 days of its adoption. The report would have to cover the substance of the model law, regulation, or guideline; how it differs from state law; and what changes were needed to state law as a result.

With some exceptions, the provisions in House Bill 5349 would apply to policies and certificates issued on or after January 1, 2007. Generally speaking, the bill does not affect life insurance policies that provide long-term care through accelerated benefits.

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. (BCBSM can only provide this coverage through a subsidiary that is not tax exempt.) House Bill 5348 also would include assisted living facilities as a setting where services covered by long-term care insurance could be provided.

BACKGROUND INFORMATION:

A useful *Shopper's Guide to Long-Term Care Insurance*, provided by the National Association of Insurance Commissioners is available at the following website.
http://www.michigan.gov/documents/cis_ofis_ltcshop_23739_7.pdf

ARGUMENTS:

For:

House Bill 5349 would update Michigan's law regulating the sale of long-term care insurance, for the most part by adopting provisions found in the model legislation approved in 2000 by the National Association of Insurance Commissioners (NAIC). The bill contains some significant consumer protections. For example, the bill would require insurance companies to allow a customer to designate another person as an additional person to receive notices if a policy was about to lapse due to nonpayment. This could prevent cases where a policyholder falls ill or is otherwise unable to respond to his or her mail, misses premium payments, and then loses coverage as a result.

The "nonforfeiture" benefit and "contingent benefits upon lapse" provisions are also important protections. These provisions would mean that a person faced with losing all coverage because they cannot afford to continue paying policy premiums (particularly when premiums rise substantially) would instead be able to continue to receive coverage, albeit at lower levels. This could lead to a paid-up policy with a shortened benefit period.

The bill also offers policyholders faced with rising premiums the option of keeping premiums the same and reducing coverage, using several options.

The bill would require companies to develop suitability standards that would be used to determine if the purchase or replacement of a long-term care policy made sense for a customer; the company would be required to train its agents in the use of such standards. This should help consumers make better decisions about a complicated product. Customers would also be provided with access to a brochure from the state's Medicare/Medicaid Assistance Program containing information on the availability of free and independent insurance purchasing and public benefits counseling.

Customers would have to be provided, under the bill, with information about premium rate schedules, the likelihood of rate increases, and the options available to the customer in the event of a rate increase. The bill also requires some additional training for producers (agents) in the intricacies of long-term care insurance and long-term care services.

Response:

Representatives of life insurance companies, which generally support the proposed legislation, would prefer that the adoption of a provision addressing how a policyholder could reduce coverage and lower the cost of a policy be delayed until discussions underway at the national level are complete. This topic is currently under discussion in the ongoing revision of the model act by the National Association of Insurance Commissioners. It would make sense to wait until those discussions are complete so that companies would not face a Michigan law that is different from regulations elsewhere.

For:

House Bill 5349 contains a number of additional provisions regarding rate regulation by state regulators. An analysis from OFIS says the rate provisions will bring rate stability to the long-term care insurance market. The analysis also says the following about these provisions:

These sections produce standards that give specifics about how policies must be rated when initially marketed and in later years. This language puts all insurance companies on the same footing when they make their initial rating schedules. In the past some insurers would bring a new product into the market with a low price hoping to capture large market share only to find as the policies matured that their products were underpriced and large rate increases were needed to pay benefits. At this older age, policyholders cannot buy a new policy with another company without paying a much higher premium than they would have paid had they initially purchased that company's policy, instead of purchasing the lower [priced] policy.

For:

House Bill 5348 would bring long-term care coverage provided by Blue Cross Blue Shield of Michigan under the code, and would repeal the sections dealing with long-term care coverage in the act that governs BCBSM, the Nonprofit Health Care Corporation Reform Act. This would mean that when amendments were needed to address long-term

care insurance law, only one statute would need amending rather than two. (BCBSM can only provide this coverage through a subsidiary that is not tax exempt.)

The bill also would include assisted living facilities as a setting where services covered by long-term care insurance could be provided. OFIS says that adding this language will help resolve the problem caused when a long-term care policy requires services be provided in a licensed facility. Michigan inspects but does not license assisted living facilities; this language is aimed at allowing policyholder to collect long-term care benefits when in the assisted living setting.

POSITIONS:

The Office of Financial and Insurance Services (OFIS) supports the bills. (2-13-06)

AARP Michigan supports the bill. (2-13-06)

The Life Insurance Association of Michigan and The American Council of Life Insurers both support the bill with amendments to remove Section 3910b, dealing with ways to reduce coverage and lower premiums, until the latest NAIC model language is finalized. (2-13-06)

The Michigan Association of Insurance and Financial Advisors is neutral on the bill but indicated it would support the bill if it required producers to receive education about long-term care as part of their initial training but not as a continuing education requirement. (2-13-06)

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