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Senate Bill 1 (Substitute H-3 as passed by the House)

Sponsor: Senator Aric Nesbitt

Senate Committee: Insurance and Banking

House Committee: Select Committee on Reducing Car Insurance Rates

CONTENT

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

- Require all automobile insurance policies offered in the State to include benefits for personal injury protection (PIP), property protection insurance, and residual liability insurance.
- Allow an insured person to select, beginning July 1, 2020, one of four PIP coverage levels: 1) \$50,000, if the person were enrolled in Medicaid, or if the person's spouse and any resident relative had qualified health insurance, Medicaid, or insurance that provided PIP benefits, 2) \$250,000; 3) \$500,000; or 4) unlimited.
- Allow a qualified person to elect not to maintain coverage for PIP benefits, for insurance policies issued on or after the bill's effective date, if the person's spouse and any resident relative had qualified health insurance or PIP coverage, and provide the definition of a "qualified person".
- Require any premium rates filed by an insurer for PIP coverage under automobile insurance policies effective before July 1, 2028, to result, as nearly as practicable, in an average reduction per vehicle from the premium rates for PIP coverage that were in effect for the insurer on May 1, 2019, as follows: 1) an average 45% or greater reduction per vehicle for policies with a \$50,000 PIP coverage limit, 2) an average 35% or greater reduction per vehicle for policies with a \$250,000 PIP coverage limit, 3) an average 20% or greater reduction per vehicle for policies with a \$500,000 PIP coverage limit, and 4) an average 10% or greater reduction per vehicle for policies with unlimited PIP coverage.
- Require the Director of the Department of Insurance and Financial Services (DIFS) to review a filing submitted by an insurer, and disapprove a rate filing that the Director determined did not result in the premium reductions required by the bill.
- Require an insurer to submit a revised premium rate filing to the Director within 15 days after the Director disapproved a filing.
- Require an insurer to file, before July 1, 2020, premium rates for PIP coverage for automobile insurance policies effective after July 1, 2020.
- Allow an insurer to apply to the Director for approval to file rates that would result in a lower premium reduction level or an exemption from the bill's requirements, and require the Director to approve the application under certain circumstances.
- Prohibit an insurer from establishing or maintaining rates or rating classification for automobile insurance based on home ownership, educational level attained, occupation, the postal zone in which the insured resided, and credit score.
- Require a rate filing to specify that the insurer would not refuse to insure, refuse to continue to insure, or limit the amount of coverage available because of the location of the risk, and that the insurer recognized those practices to constitute redlining.
- Specify that the Michigan Catastrophic Claims Association (MCCA) would not have liability for a loss under PIP coverage for a motor vehicle accident policy to which the \$50,000, \$250,000, and \$500,000 PIP coverage limits applied after July 1, 2020.
- Require the Director to order the MCCA to issue a rebate, if the actuarial examination showed that the MCCA's assets exceeded 120% of its liabilities.

- Require the MCCA to prepare and submit to the Legislature and post on its website, by September 1 of each year, an annual consumer statement containing certain information.
- Require the MCCA's plan of operation to provide for procedures for a refund to MCCA members, for distribution to insureds, and require the procedures to provide for a distribution of a refund attributable to a historic vehicle equal to 20% of the refund for a car that was not a historic vehicle.
- Require a person entitled to claim PIP benefits through the assigned claims plan to file a completed application on a claim form provided by the Michigan Automobile Insurance Placement Facility (MAIPF) and provide reasonable proof of loss to the MAIPF.
- Require the MAIPF to review a claim for PIP benefits under the assigned claims plans, make an initial determination of a claimant's eligibility for benefits, and deny a claim if determined was ineligible.
- Specify that the MAIPF would be required to provide PIP benefits only up to \$250,000; or \$2.0 million, if the person were entitled to claim benefits under the assigned claims plan.
- Specify that a medical provider would not be eligible for reimbursement for certain services for more than certain specified amounts.
- Require a medical provider to submit necessary records and other information concerning treatment, products, services, or accommodations provided for utilization review.
- Require DIFS to promulgate rules to establish criteria or standards for utilization review.
- Specify that an insurer would be required to pay attendant care only up to 56 hours per week if the care were provided by the injured person's relative, a person domiciled in the injured person's household, or a person with whom the injured person had a business or social relationship before the injury.
- Allow an insurer to contract to pay benefits for attendant care for more than the 56-hour limitation.
- Reduce from 67% to 55% the amount of revenue derived from a regulatory fee that could be used for the regulation of financial conduct of people regulated under the Director's authority and for the regulation of people regulated under the Director's authority engaged in the business of health care and health insurance in the State.
- Require DIFS to maintain on its website a page that, among other things, advised that the Department could assist a person who believed that an automobile insurer was not paying benefits, not making timely payments, or otherwise not performing as it was obligated to do under a policy; and a page that advised consumers about the changes to automobile insurance made by the bill.
- Modify certain liability coverage limits for an automobile liability or motor vehicle liability policy that insured against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle.
- Require the Director to engage one or more independent actuaries to examine the MCCA's affairs and records, beginning July 1, 2022, and every third year after that.
- Require an insurer to offer to an applicant or named insured that selected a PIP coverage limit an exclusion related to other health or accident coverage, if certain conditions applied.
- Increase, from \$1,000 to \$3,000, the threshold for which tort liability arising from the ownership, maintenance, or use within the State of a motor vehicle would apply to damages to a motor vehicle, to the extent the damage were not covered by insurance.

The bill also would enact Chapter 31A (Managed Care) of the Code to do the following:

- Allow an automobile insurer to offer a managed care option that provided for allowable expenses, if certain conditions were met.
- Require an automobile insurer that offered a managed care option also to offer PIP benefits that were not subject to the managed care option.
- Require a managed care option to provide for all of the following: 1) that PIP benefits would be primary and would not be coordinated with other health and accident coverage, 2) that PIP benefits would have to be exhausted by the individual claiming benefits under the managed care option before he or she could seek benefits from another health or accident

coverage provider, and 3) that deductibles, copays, or other similar sanctions would not be assessed or collected for the individual claiming IPP benefits under the managed care option.

Additionally, the bill would enact Chapter 63 (Anti-Fraud Unit) of the Code to do the following:

- Establish an anti-fraud unit as a criminal justice agency within DIFS.
- Allow the anti-fraud unit to conduct criminal background checks on applicants for licenses and current licensees, collect and maintain claims of criminal and fraudulent activities in the insurance industry and investigate claims of criminal and fraudulent activity in the insurance market, among other things.
- Allow the Director to share and receive certain documents, materials, or information.
- Require the anti-fraud unit to prepare and publish to the Legislature, beginning July 1 of the year after the bill's effective date, a report on the anti-fraud unit's efforts to prevent automobile fraud.

Section 3112, which the bill would amend, would apply to products, services, or accommodations provided after the bill's effective date. The bill also states that Section 3135, which the bill would amend, is intended to codify and give full effect to the opinion of the Michigan Supreme Court in *McCormick v. Carrier*, 487 Mich 180 (2010).

MCL 500.150 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Medicaid Costs

Enactment of the proposed bill would lead to a gradual increase in Medicaid costs that would depend on the availability of and public interest in unlimited PIP coverage. The bill would mandate that unlimited PIP coverage be available so an indeterminate number of individuals would opt to maintain unlimited coverage.

At present, individuals with automobile insurance in Michigan have unlimited coverage for medical and other costs tied to automobile accidents. If the legislation were enacted, people would have the requirement to purchase limited coverage with the option to purchase unlimited coverage. Some of the costs faced by those in accidents who did not have unlimited coverage would shift to other insurers, including their current primary insurer (whether that is commercial insurance, Medicare, or Medicaid). In many severe injury cases (in which the accident victim became dependent on long-term care) costs would shift to Medicaid as most people do not have long term care coverage beyond the limited coverage provided to Medicare recipients.

The bill would create four levels of PIP coverage, including unlimited, \$500,000, \$250,000, and a \$50,000 option available only to those enrolled in Medicaid. Individuals who were eligible for Medicare or other qualified health coverage could opt out of PIP coverage entirely.

Because of the uncertainty about the interest in unlimited PIP coverage, it is difficult to provide a precise estimate of the potential increase in Medicaid costs. Based on the available data and the assumptions outlined below, the Senate Fiscal Agency (SFA) projects costs similar to those projected in the previous analysis of Senate Bill 1: that enactment of the legislation would cause Medicaid costs to increase gradually over a ten-year period by \$70.0 million General Fund/General Purpose (GF/GP). In other words, Medicaid costs ten years after enactment would be \$70.0 million GF/GP greater, which equates to about a 1.3% increase over a ten-year period, or a 0.13% per year increase in the State share of Medicaid spending. This figure would depend on the interest in unlimited PIP coverage. If more people purchased unlimited PIP coverage, Medicaid costs would be lower. If there were less interest in unlimited PIP coverage, then the increase in Medicaid costs would be greater.

The SFA notes that costs would grow gradually year to year and the rate of growth would slowly decline to the point that, after ten years, the post ten-year annual cost growth would

be less than \$3.0 million GF/GP per year. This long-term annual cost increase would be about 0.05% of overall State Medicaid costs.

This estimate is slightly higher than the estimate included in the SFA analysis of Senate Bill 1 (S-1) and House Bill 4397 (H-1) but that is largely due to the effective date being three months before the start of FY 2020-21, so the original estimate was updated for anticipated medical inflation.

The complete opt-out option for Medicare recipients would lead to an indeterminate number of Medicare-eligible individuals completely opting out. While Medicare-eligible individuals who completely opted out would be fully covered for hospital, pharmaceutical, and physician services, they would have limited coverage for long-term care (up to 100 days under certain circumstances) and attendant care, so those costs would be shifted to Medicaid for those Medicare recipients who were injured in accidents, required long term or attendant care, and spent down to Medicaid eligibility.

Similarly, Medicaid recipients who opted for the \$50,000 coverage level and required extensive care after automobile accidents would see their medical costs shifted from automobile insurance and the MCCA to Medicaid. Over time, the largest component of this cost shift would be nursing home and attendant care.

Other individuals could choose \$250,000, \$500,000, or unlimited PIP coverage. If individuals who chose \$250,000 or \$500,000 in coverage faced large costs from auto accidents, in particular long-term care and attendant care costs, many of them would end up spending down to Medicaid eligibility and that would lead to a cost shift as well.

There were multiple assumptions made in the derivation of this estimate. The SFA used MCCA data from 2017 to model expenditures for cases going back 40 years. To provide the most useful comparison, the SFA made its estimates in 2021 dollars as the legislation would take effect on July 1, 2020, three months before the start of FY 2020-21. The SFA used age and insurance provider data to model the insurance status of the population currently receiving MCCA services. The SFA assumed that Medicaid nursing home and pharmaceutical costs would be similar to MCCA costs for those services, but that Medicaid attendant care, hospital, and physician care costs would be two-thirds of MCCA costs. The SFA assumed 3.0% medical inflation in order to update the cost estimate from the 2017 data.

Insurance Premiums Tax Revenue

The reduction in the cost of insurance also would reduce the tax base for the 1.25% insurance premium tax. The exact reduction in revenue would depend on the change in the cost of insurance itself, which would depend partially on the PIP options selected.

The SFA estimates that the longer-term reduction in revenue would be in the range of \$15.0 million to \$20.0 million per year.

Department of Insurance and Financial Services

The bill would have an unknown, but likely negative, fiscal impact on the Department of Insurance and Financial Services.

The additional responsibilities that would be assigned to DIFS by the bill likely would result in increased administrative costs for the Department. It is possible that additional FTEs could be required to perform some of these responsibilities, but this would depend on current distribution of duties among existing staff, as well as the volume of information processing, records management, and appeals-related activity generated by the bill. The cost of an additional FTE is estimated at \$120,000 per year. Some responsibilities described in the bill likely would be sufficiently funded by existing appropriations.

The bill would require DIFS to engage at least one independent actuary to examine the MCCA's records and affairs every three years, beginning in July 2022. This cost likely would total less than \$100,000 per engagement.

The bill also would establish the anti-fraud unit within the Department to prevent and investigate criminal and fraudulent activities in the insurance industry, as established under Executive Order 2018-9. Under that authority, the anti-fraud unit would work with the Department of State Police to have full access to criminal justice information and criminal justice information systems and to conduct criminal background check on applicants for licenses and current licensees, collect and maintain claims of criminal and fraudulent activities, investigate claims of criminal and fraudulent activity, maintain records of investigations, share records of investigations of with other criminal justice agencies, review information from other agencies and work with those agencies to promote investigation and prosecution of criminal and fraudulent activities in the insurance market, and prepare an annual report to the Legislature.

As for the annual costs of operating the anti-fraud unit, appropriations for this unit were first proposed for fiscal year 2019-20. The Governor, the Senate Appropriations Committee, and the House Appropriations Committee recommendations each proposed an appropriation of 6.0 FTEs and \$499,300 in restricted funding for its operations and administration. The cost of criminal history background checks under the bill would be assumed as part of the standard cost of operations of the Department of State Police's Criminal Justice Information Systems budget. Other existing entities that could work toward the objectives of the anti-fraud unit could include the Consumer Protection Practice Bureau, the Department of Attorney General's Health Care Fraud Division and the Department of State Police's Fraud Investigation Unit.

Department of Corrections

The bill specifies that a physician, hospital, clinic, or other person or institution that knowingly submitted false or misleading records or other information to an insurer, the MCCA, or the Department would commit a fraudulent insurance act. A person who commits a fraudulent insurance act is guilty of a felony punishable by imprisonment for up to four years, a maximum fine of \$50,000, or both.

This proposed offense would have a negative, but likely minor, fiscal impact on the State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to the State is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

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