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House Bill 4397 (Substitute H-1 as passed by the House)
Sponsor: Representative Jason Sheppard
House Committee: Insurance (discharged)
Senate Committee: Committee of the Whole

CONTENT

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

- Allow an insured person to select one of four personal injury protection (PIP) coverage levels: 1) \$50,000, plus \$200,000 for medically necessary treatment rendered at an acute care unit or trauma center of a hospital immediately after the accidental bodily injury; 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, and provide the definition of a "qualified person".
- Require the Director of the Department of Insurance and Financial Services (DIFS) to approve forms for the selection of PIP benefits and for the election not to maintain PIP coverage.
- Prohibit an insurer from establishing or maintaining a rate or rating classification for automobile insurance based on a nondriving factor, and define "nondriving factors".
- Require an insurer to file a manual of classification, manual of rules and rates, and a rating plan in accordance with Chapter 24 (Casualty Insurance Rates), for automobile insurance.
- Require an insurer to file, before six months after the bill's effective date, premium rates for PIP coverage for policies effective after six months after but before one year and six months after the bill's effective date.
- Require any premium rates filed by an insurer for PIP coverage effective before five years and six months after the bill's effective date to result, as nearly as practicable, in an average reduction per vehicle from the premium rate, as specified in the bill.
- Require the Director to review premium rates filed by an insurer as described above, and require the Director to disapprove a filing that did not comply with the bill.
- Specify that the Michigan Catastrophic Claims Association (MCCA) would not have liability for a loss under PIP coverage for a motor vehicle accident policy, unless an insured chose unlimited PIP coverage, beginning after the bill's effective date.
- Require the Director to engage one or more independent actuaries to examine the MCCA's affairs and records, beginning July 1, 2019, and every third year after that.
- Require the Director to order the MCCA to issue a rebate if the actuarial examination showed that the MCCA's assets exceed 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.
- Specify that an insurer that is exempted from any requirements of Chapter 21 of the Code could not establish or maintain rates or rating classifications for automobile insurance based on a factor that was not allowed, or that was prohibited.
- 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 Facility.

- 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 to be ineligible.
- Limit reimbursement to medical providers based on schedules for maximum fees for worker's compensation.
- 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.
- Prohibit an attorney representing an injured person concerning a claim for payment of PIP benefits from claiming, filing, or serving a lien for payment of a fee unless certain conditions are met.
- Specify that an insurer would be required to pay attendant care only up to 56 hours per week if the care were provided by an individual who was related to the injured person, an individual domiciled in the person's household, or an individual 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.
- Modify the statute of limitations for filing an action to enforce rights to indemnity or reimbursement against a third party.
- Create the Automobile Insurance Fraud Task Force within the Michigan State Police (MSP).
- Require the Task Force to investigate automobile insurance fraud and pursue the prosecution of persons that commit automobile insurance fraud.
- Require the Task Force to prepare and publish an annual report to the Legislature detailing automobile insurance fraud by medical providers, attorneys, or other people and unfair claims practices of insurance companies, and the impact the fraud and unfair claims practices had on rate charges for automobile insurance.
- Create the "Automobile Insurance Fraud Fund".
- Require a fine collected for a fraudulent insurance act committed in violation of Section 5403 of the Code to be credited to the Fund.

Section 3112, which the bill would amend, would apply to products, services, or accommodations provided after the bill's effective date.

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.

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 analysis of Senate Bill 1: that enactment of the legislation would cause Medicaid costs to increase gradually over a ten-year period by \$65.9 million General Fund/General Purpose (GF/GP). In other words, Medicaid costs ten years after enactment would be \$65.9 million GF/GP greater, which equates to about a 1.2% increase over a ten-year period, or a 0.12% per year increase in the State share of Medicaid spending. This figure would depend on the interest in unlimited PIP coverage. The more people who purchased unlimited PIP coverage, the lower the Medicaid costs would be. 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.

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 2019 dollars. 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 to 2019.

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 an additional FTE would 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 2019. This cost likely would total less than \$100,000 per engagement.

The Department would receive funds from the Automobile Insurance Fraud Fund until five years after the bill's effective date. Approximately 11% of the Fund would be distributed to DIFS for expenses related to the operation of the Automobile Insurance Fraud Task Force.

The Department also would experience cost savings due to the transfer and dissolution of 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 Subcommittee Recommendations each proposed an appropriation of \$499,300 in restricted funding for its operations and administration.

Department of Treasury

The bill would have no fiscal impact on the Department of Treasury. Based on the level of estimated revenue within the Automobile Insurance Fraud Fund, the ongoing costs associated with administering and investing the Fund would be less than \$100, which would be within current appropriations.

Department of State Police

The bill would create the Automobile Insurance Fraud Task Force within the MSP, which would consist of a member from DIFS, a member from the MCCA, a member from the Michigan Automobile Insurance Placement Facility, a member from the Department of Attorney General, and five members from the MSP. The Task Force would have to receive records from the anti-fraud unit created under Executive Order 2018-9, collect and maintain claims of insurance fraud, investigate and pursue prosecution of those who commit automobile insurance fraud, work with other law enforcement agencies to outreach and assist in prosecutions, and prepare an annual report to the Legislature.

As for the annual costs of operating the Task Force, it is difficult to estimate to the extent to which the responsibilities and time commitments of appointed members from the Department of Insurance and Financial Services, the Catastrophic Claims Association, the Michigan Automobile Insurance Placement Facility, and the Attorney General would increase as members of the Task Force. Accordingly, that makes estimating the costs for those members difficult. Under the Consumer Protection Practice Bureau, the Department of Attorney General currently has a functioning Health Care Fraud Division. The Department of State Police, which would be charged with directing the Task Force, currently has a Fraud Investigation Unit within its Special Investigations Division, but it mostly focuses on automobile theft and other types of fraud using five teams throughout the State. To fully address the responsibilities under the proposed Task Force and to work with the Department of Insurance and Financial Services and the Department of Attorney General to investigate and prosecute cases, it is estimated that the MSP would require 6.0 new FTEs, which would include five uniformed officers and an analyst, along with travel, fleet, and contractual services, supplies and materials costs. Payroll costs would be approximately \$1,125,000 each year, along with \$155,000 for other costs, for an annual budget of \$1,280,000.

The bill would require the Task Force to prepare an extensive annual report for submission to the Legislature. This could result in additional costs, but that amount cannot be determined at this time.

As discussed above, the bill would create the Automobile Insurance Fraud Fund, from which money would be disbursed to the various organizations that make up the Task Force. For the first five years, money would be disbursed for the costs of Task Force operations in proportion to those entities' representation. After that, the MSP would spend money from the Fund for Task Force operations. The bill would include no GF/GP appropriations, but does specify that a fine collected for a fraudulent insurance act committed in violation of Section 5403 of the Code would have to be credited to the Automobile Insurance Fraud Fund. The amount of revenue generated from the fine cannot be determined at this time.

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 be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

This proposed offense would have a negative, but likely minor, fiscal impact on local government, and no impact on State government. An increase in misdemeanor arrests and convictions could increase resource demands on local court systems, law enforcement, and jails. Any associated increase in fine revenue would be dedicated to public libraries.

Date Completed: 5-13-19

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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.