Legislative Analysis

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CODIFY AFFORDABLE CARE ACT PROVISIONS

House Bill 4619 as passed by the House
Sponsor: Rep. Julie M. Rogers

House Bill 4620 (H-1) as passed by the House
Sponsor: Rep. Kimberly Edwards

House Bill 4621 (H-2) as passed by the House
Sponsor: Rep. John Fitzgerald

House Bill 4622 (H-3) as passed
Sponsor: Rep. Reggie Miller

House Bill 4623 (H-2) as passed
Sponsor: Rep. Matt Koleszar

Committee: Insurance and Financial Services
Complete to 6-29-23

SUMMARY:

House Bills 4619, 4620, 4621, 4622, and 4623 would amend the Insurance Code to add various health insurance requirements and protections for insured individuals in Michigan.

House Bill 4619 would add various characteristics to those that are protected from certain practices.

Currently, the act prohibits an insurer from limiting the amount of coverage available to an individual or refusing to insure or continue to insure an individual based on race, color, creed, marital status, sex, or national origin. The bill would add gender, gender identity or expression, and sexual orientation to the characteristics covered by this provision.

In addition, the act requires that charging a different rate for the same coverage based on an individual's sex, marital status, age, residence, location of risk, disability, or lawful occupation must be based on sound actuarial principles, a reasonable classification system, and be related to the actual and credible loss statistics or, in the case of new coverages, reasonably anticipated experience. The bill would add race, color, creed, national origin, gender, gender identity or expression, and sexual orientation to the characteristics covered by this protection.

MCL 500.2027

House Bill 4620 would prohibit an insurer that delivers, issues for delivery, or renews a health insurance policy in Michigan from limiting or excluding coverage for an individual by imposing a ***preexisting condition exclusion*** on the individual.

The prohibition would not apply to any of the following:

- Grandfathered health plan coverage, as that term is defined in 45 CFR 147.140.[1]
- Insurance coverage that provides benefits for any of the following:
    - Hospital confinement indemnity.

[1] https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-147#147.140

- Disability income.
- Accident only.
- Long-term care.
- Medicare supplement.
- Limited benefit health.
- Specified disease indemnity.
- Sickness or bodily injury, or death by accident, or both.
- Retiree-only health insurance coverage.
- Stand-alone dental plans.
- Stand-alone vision plans.
- Other limited benefit policies.

Preexisting condition exclusion would mean a limitation or exclusion of benefits or a denial of coverage based the fact that on a physical or mental condition was present before the effective date of coverage or before the date coverage is denied, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the date of the coverage or denial of coverage.

Proposed MCL 500.3406aa

House Bill 4621 would require health insurance policies under which dependent coverage is available to offer the dependent coverage, at the option of the policyholder, until a dependent has reached 26 years of age. The bill would also require an insurer to provide the same benefits, at the same rate or premium, for dependent children as for any other covered dependent. The bill states that it would not require an insurer to make dependent coverage available for the child of a child who is receiving dependent coverage.

MCL 500.3403

House Bill 4622 would prohibit an insurer that delivers, issues for delivery, or renews a health insurance policy in Michigan from instituting annual or lifetime limits on the dollar value of essential health benefit coverage under House Bill 4623. This would not apply to grandfathered health plan coverage, as defined in 45 CFR 147.140, or to a short-term or one-time limited duration policy or certificate of up to six months. The bill states that it would not prevent an insurer from placing annual or lifetime dollar limits with respect to any individual on specific covered benefits that are not essential health benefits to the extent that the limits are otherwise allowed under federal or state law.

The bill is tie-barred to House Bill 4623 and cannot take effect unless both bills are enacted.

Proposed MCL 500.3406z

House Bill 4623 would require an insurer that delivers, issues for delivery, or renews a health insurance policy in the individual or small group market in Michigan to provide coverage for all of the following:

- Ambulatory patient services.
- Emergency services.
- Hospitalization.
- Pregnancy, maternity, and newborn care.
- Mental health and substance use disorder services, including behavioral health treatment.

- Prescription drugs.
- Rehabilitative and habilitative services and devices.
- Laboratory services.
- Pediatric services, including oral and vision care. Pediatric oral care would not be required if the insured has dental insurance from another source and provides evidence of coverage to the insurer.
- Preventive and wellness services and chronic disease management services identified by the director of the Department of Insurance and Financial Services (DIFS) as meeting one of the following requirements:
    - Evidence-based items or services if the United States Preventative Services Task Force has rated the item or service as "A" or "B" for the purposes of its recommendations currently in effect with respect to the individual involved.
    - For women, preventive care and screening not described immediately above if the United States Health Resources and Services Administration has included the care or screening for the purposes of its guidelines.
    - An immunization with routine use in children, adolescents, and adults if the Advisory Committee on Immunization Practices of the United States Centers for Disease Control and Prevention (CDC) has included the immunization for the purposes of its recommendations with respect to the individual involved.
    - For infants, children, and adolescents, evidence-informed preventive care and screenings if the United States Health Resources and Services Administration has included the care or screening for the purposes of its guidelines.

  Any change to the preventive and wellness services and chronic disease management services required as described above (the last bulleted item) would have to take effect for the plan year that begins on or after the date that is one year after the date the recommendation or guideline is issued. An insurer could not impose any cost-sharing requirements for any of those services, except as otherwise allowed under 45 CFR 147.130(a)(2)(i), (ii),and (iii).[2]

Benefits required as described above would be subject to all requirements applicable to those benefits under Chapter 34 of the act. The bill would not limit the requirements to provide additional benefits under that chapter.

The bill would not require an insurer to cover items of the United States Preventative Services Task Force[3] that have been downgraded to a "D" rating or any item or service during a plan year that is subject to a safety recall or is otherwise determined to pose a significant safety concern by a federal agency authorized to regulate the item or service.

The bill would not prevent an insurer from using reasonable medical management techniques to determine the frequency, method, treatment, or setting for a required item or service to the extent they are not specified in the relevant recommendation or guideline. An insurer could rely on the relevant clinical evidence base and established reasonable medical management techniques to determine the frequency, method, treatment, or setting of a recommended preventative health service.

[2] https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-B/part-147#147.130
[3] https://www.uspreventiveservicestaskforce.org/uspstf/

Out-of-network and cost sharing

The bill would not require an insurer that has a network of providers to provide benefits for required items and services described above that are delivered by an out-of-network provider and would not preclude such an insurer from imposing cost-sharing requirements for these items or services if they are delivered by an out-of-network provider. An insurer that does not have a provider in its network that can provide the required items or services would have to cover them with an out-of-network provider without imposing cost sharing.

Exclusions

The bill would not apply to grandfathered health plan coverage, as that term is defined in 45 CFR 147.140, or to a short-term or one-time limited duration policy or certificate of not longer than six months.

Proposed MCL 500.3406bb

BRIEF DISCUSSION:

According to committee testimony, the bills are intended to codify various provisions of the federal Patient Protection and Affordable Care Act (ACA), including some provisions that have been challenged in federal court. Specifically, a March 2023 federal decision in *Brainwood Management Inc. v. Becerra* struck down an ACA provision requiring health insurance to fully cover certain preventive care measures.[4] Supporters of the bills argue that these provisions are critical to protecting the health of Michigan residents and that acting proactively to protect them as the ACA is challenged in federal court is vital to ensuring that residents do not lose them. According to committee testimony, at least 15 other states have already codified at least some ACA protections into state law.[5]

FISCAL IMPACT:

The bills would not have a fiscal impact on the state or local governments.

POSITIONS:

Representatives of the following entities testified in support of the bills (6-8-23):

- Department of Insurance and Financial Services
- The Committee to Protect Health Care
- US of Care
- Michigan State Medical Society

The following entities indicated support for the bills:

- Michigan Primary Care Association (6-8-23)
- Disability Rights Michigan (6-8-23)
- Michigan Academy of Family Physicians (6-8-23)
- The Arc Michigan (6-8-23)

[4] https://www.kff.org/womens-health-policy/issue-brief/explaining-litigation-challenging-the-acas-preventive-services-requirements-braidwood-management-inc-v-becerra/

[5] https://www.commonwealthfund.org/blog/2022/aca-preventive-services-benefit-jeopardy-what-can-states-do

- Michigan Osteopathic Association (6-8-23)
- Equality Michigan (6-20-23)
- Michigan Nurses Association (6-8-23)
- Michigan Health and Hospital Association (6-8-23)
- The HIV-AIDS Alliance of Michigan (6-8-23)
- American Association for Marriage & Family Therapy (6-8-23)
- National Association of Social Workers (6-8-23)

The following entities indicated support for House Bill 4619 (6-20-23):

- Insurance Alliance of Michigan
- Young Women's Christian Alliance of Kalamazoo

The following entities indicated opposition to the bills:

- National Federation of Independent Businesses (6-8-23)
- Mackinac Center for Public Policy (6-20-23)

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