

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 436

(Senator Feldman, *et al.*)

Finance

Health and Government Operations

Insurance - Surplus Lines - Short-Term Medical Insurance

This bill authorizes short-term medical insurance to be purchased from a nonadmitted insurer in the State as a surplus line if (1) the insurance coverage being sought is in excess of coverage available from, or is unavailable from, an admitted insurer in the State that writes that particular kind and class of insurance and (2) the coverage is provided for a limited time and involves travel to or from the United States in a specified manner. The bill establishes requirements for brokers who place the surplus lines insurance. The Insurance Commissioner must develop and make available on the Maryland Insurance Administration (MIA) website a consumer guide on short-term medical insurance.

The bill applies to all policies and contracts of surplus lines insurance for short-term medical insurance issued, delivered, or renewed in the State on or after October 1, 2016.

Fiscal Summary

State Effect: General fund revenues may increase minimally to the extent that the bill results in additional individuals purchasing short-term medical insurance that would otherwise have been unobtainable, due to the 3% surplus lines tax. MIA can develop and make available the required consumer guide with existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill authorizes short-term medical insurance to be purchased as a surplus line if it provides limited health insurance benefits for a limited period of time to (1) U.S. residents traveling abroad within 30 days after the effective date of the coverage and (2) residents of another country traveling to the United States within 30 days after the effective date of the coverage, as long as they are not traveling for the purpose of attending an institution of higher education. This insurance may not exceed 11 months of coverage or be extended or renewed.

A nonadmitted insurer must provide written notice to the applicant and provide contact information for the Maryland Health Benefit Exchange. The written notice must state that (1) coverage may be available under the federal Patient Protection and Affordable Care Act (ACA) without medical underwriting; (2) the short-term medical insurance may be available from an admitted insurer; (3) similar coverage may be available from an admitted insurer offering travel insurance; and (4) the short-term medical insurance does not meet the requirements for minimum essential coverage under ACA, and the purchaser may be subject to tax penalties for not having minimum essential coverage.

The short-term medical insurance must also meet the requirements specified for other surplus lines by Insurance Law, including the requirement that a diligent search be made among admitted insurers that write the particular kind and class of insurance being sought, before the short-term medical insurance may be purchased.

Short-term medical insurance may not be procured from a nonadmitted insurer unless (1) it is purchased through a qualified surplus lines broker; (2) if purchased on the Internet, the website identifies the broker; and (3) the diligent search made includes a search of the short-term medical insurance policies offered for sale by admitted insurers. An affidavit regarding the required diligent search for short-term medical insurance procured from a nonadmitted insurer must include the reason for the declination for each declining authorized insurer.

A short-term medical insurance policy procured from a nonadmitted insurer may not include a preexisting condition exclusion or a definition of sickness or illness that began before the effective date of the policy unless the condition, sickness, or illness was first manifested, treated, or diagnosed before the effective date of the policy.

An applicant for a certificate of qualification to act as a surplus lines broker must be qualified as an insurance producer, *hold an insurance producer's license for the kind of insurance being solicited or sold*, and be competent and trustworthy.

Current Law: An “admitted insurer” means an insurer that is authorized to engage in the business of insurance in the State. A “nonadmitted insurer” means an insurer that is not authorized to engage in the business of insurance in the State. Insurance may only be purchased from an unauthorized insurer as a surplus line if the following conditions are met:

- If the insurance is purchased through a broker, the broker must be qualified.
- A diligent search must be made among the authorized insurers that are writing the particular kind and class of insurance in the State to see if the insurance being sought is already available. The diligent search is considered complete if the insured, surplus lines broker, or insurer obtains declinations of a risk from three authorized insurers that write the particular kind and class of insurance being sought. A diligent search may not be required under other specified conditions.
- Unless otherwise specified, the amount of insurance purchased from an unauthorized insurer through a surplus line may only be the excess over the amount that can be purchased from authorized insurers.
- For insurance against liability of persons, a surplus line may only be purchased if the coverage cannot be obtained from three or more authorized insurers.
- Surplus lines insurance may not be procured (1) solely to obtain a lower premium rate than would be accepted by an authorized insurer; (2) solely to obtain more favorable terms in the insurance contract; or (3) to replace coverage on residential property which is insured by an authorized insurer and for which a renewal offer has been made on substantially the same terms and conditions as the current coverage.
- The insured and surplus lines insurer must comply with other applicable provisions of Insurance Law.

Chapter 96 of 2015 authorized disability insurance to be purchased from a nonadmitted insurer in the State as a surplus line if the coverage is in excess of coverage available from, or is not available from, an admitted insurer that writes that particular class of insurance in the State. The surplus lines disability insurance must provide for lost income, revenue, or proceeds in the event that an illness, accident, or injury results in a disability that impairs an insured’s ability to work or otherwise generate income, revenue, or proceeds that the insurance is intended to replace and cannot include payment for medical expenses, dismemberment, or accidental death. The surplus lines disability insurance must meet the requirements specified for surplus lines under the Insurance Article, including the

requirement that a diligent search be made among admitted insurers that write the particular kind and class of insurance being sought, before the surplus lines disability insurance may be purchased.

In performing a diligent search, an affidavit must be personally executed by the surplus lines broker or originating insurance producer at the time the surplus lines insurance is placed and filed with the Commissioner.

Under Title 3 of the Insurance Article, surplus lines insurance is subject to a premium receipts tax of 3% on all gross premiums, less any returned premiums, charged for surplus lines insurance. Revenues generally accrue to the general fund.

Unless licensed or authorized in his or her home state, to act as a surplus lines broker in Maryland, a person must obtain a certificate of qualification from MIA. An applicant for a certificate must be qualified as an insurance producer for property insurance and casualty insurance, and be competent and trustworthy, as determined by the Commissioner.

Background: According to MIA, surplus lines are not subject to regulation by the Insurance Commissioner. The Commissioner may issue a cease and desist order and impose a penalty of up to \$125,000 for the unauthorized sale of surplus lines as an unfair trade practice (§ 4-113(d) of the Insurance Article).

Short-term medical insurance is not subject to any Maryland health insurance mandates nor any federal requirements under ACA. Short-term health insurance also does not satisfy the individual mandate requirements of ACA. MIA advises that, currently, four admitted insurers sell short-term medical insurance in Maryland.

Additional Information

Prior Introductions: None.

Cross File: HB 554 (Delegates Bromwell and Kipke) - Health and Government Operations.

Information Source(s): Maryland Health Benefit Exchange, Maryland Insurance Administration, Department of Health and Mental Hygiene, Department of Legislative Services

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