HB 85

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 85 (Chairman, Economic Matters Committee)
(Departmental – Insurance Administration, Maryland)

Economic Matters Finance

Health Insurance - Small Group Market - Producer Commissions

This departmental bill prohibits an insurer, nonprofit health service plan, or HMO (carrier) from implementing a producer commission schedule that varies the amount of a commission based on the size of a small employer group unless the variation: (1) is inversely related to the size of the small employer group; (2) applies to the cumulative premium paid over a specific period of time, is uniformly applied, and is inversely related to the cumulative premium paid during the period of time; or (3) is established by a contract between the carrier and each outside producer. The bill's requirements apply to all policies, contracts, and health benefit plans issued, delivered, or renewed in the State on or after June 1, 2002.

The bill takes effect June 1, 2002.

Fiscal Summary

State Effect: Potential minimal general fund revenue increase from the State's 2% insurance premium tax on for-profit carriers. No effect on expenditures.

Local Effect: None.

Small Business Effect: The Maryland Insurance Administration (MIA) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: State law requires a carrier that offers health benefit plans to small group employers to issue a health benefit plan to any eligible small group employer. Small group employers include certain businesses which, in the preceding calendar quarter, employed at least two but not more than 50 eligible employees on at least 50% of its working days. The majority of the eligible employees also must be employed within Maryland. A small group employer also includes certain self-employed individuals, governmental units, and nonprofit corporations.

In addition, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires carriers that sell health insurance coverage in the small group market to accept every small employer that applies for such coverage, even those employers whose eligible employees include individuals with serious medical problems.

Background: Some health insurance carriers in Maryland are refusing to pay commissions to producers for the sale of small group health benefit plans to certain small group employers. An insurance producer is a person who, for compensation, sells, solicits, or negotiates insurance contracts on behalf of a carrier, an insured, or a prospective insured.

Some carriers refuse to pay commissions on these types of sales in an attempt to discourage the sale of health benefit plans to small groups that contain high-risk individuals. MIA has received complaints from insurance producers that have not been paid commissions by carriers when selling policies to self-employed individuals eligible to purchase coverage in the small group market.

In 1998, the federal Health Care Financing Administration (now called the Centers for Medicare and Medicaid Services or CMS) issued a bulletin on "Agent Commissions and Application Processing Delays," citing situations in which some carriers were attempting to discourage the offering of policies to eligible small groups containing high-risk individuals, by withholding commissions from agents for sales to such small groups. Agents had sent CMS copies of notices from a number of carriers stating the carriers would not pay or would reduce commissions and bonuses for sales to high-risk groups. Paying agents less through all forms of agent compensation (commissions, bonuses, or other rewards) for high-risk groups constitutes a circumvention of the insurance reform provisions of HIPAA.

Several states have taken action, under their Unfair Trade Practices Acts or their rating authority, to combat the practice of reducing or eliminating agent commissions.

Typically, a state's Unfair Trade Practices Act prohibits any action by a carrier to deflect bad risks away from itself and toward other carriers.

State Effect: If the bill's requirements result in more policies being issued to small group employers, MIA general fund revenues could increase from the 2% premium tax imposed on for-profit carriers. Any increase is expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene (Maryland Health Care Commission), Maryland Insurance Administration, U.S. Centers for Medicare and Medicaid Services, Department of Legislative Services

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