

HCS HB 1278 -- INSURANCE

SPONSOR: Luetkemeyer

COMMITTEE ACTION: Voted "do pass" by the Committee on Financial Services by a vote of 14 to 6.

This substitute makes changes to the laws regarding insurance.

DEPARTMENT OF INSURANCE FEES

The substitute changes the way fees are assessed to pay for expenses incurred by the Department of Insurance. The substitute:

(1) Limits the expenses that insurance companies must pay for examinations by the department. Current law allows the director to assess fees on each insurer for the examination of that insurer. The substitute limits this assessment to the direct expenses incurred by the examiners. The department must provide an itemized report of expenses which includes the rate of pay for each examiner and the amount of time spent by each examiner. The itemized reports must be verified by the insurance company before the department can issue the assessment;

(2) Changes the additional assessment for examiner support staff from 15% to 10% of the total expenses assessed; and

(3) Limits the reimbursement of department employees to either 80% of the federal per diem rate or the actual travel expenses incurred in conducting the examinations, whichever is less.

PROPERTY AND CASUALTY INSURANCE

The substitute amends the laws regarding the Property and Casualty Insurance Guaranty Association Act. The substitute:

(1) Expands the guaranty association's obligations for claims arising from bodily injury, sickness, or disease to include damages for pain and suffering;

(2) Adds provisions establishing the guaranty association's obligations for insurance products that have been created during the past several years; and

(3) Clarifies provisions regarding the administration of the guaranty fund to comply with the recommendations of the National Conference on Insurance Guaranty Funds.

GROUP HEALTH INSURANCE

The substitute amends the law regarding group health insurance. The substitute:

(1) Defines the terms "pre-existing condition exclusions" and "waiting period";

(2) Prohibits group health insurance issuers from establishing enrollment eligibility requirements based on health status-related factors, which include medical history and genetic information;

(3) Prohibits health insurance issuers that offer group health insurance coverage from requiring any individual, as a condition of enrollment, to pay a premium or other contribution that is greater than that made by other similarly situated individuals enrolled in the plan on the basis of health status-related factors;

(4) Requires health insurance issuers offering large group health plan coverage to renew or continue coverage in force at the option of the plan sponsor;

(5) Outlines conditions under which health insurance issuers can non-renew or discontinue group health plan coverage, particular types of large group health insurance coverage, and all large group health insurance coverage;

(6) Permits health insurance issuers to modify coverage for a large group health plan at the time of coverage renewal; and

(7) Changes the definition of the term "placement" as it pertains to coverage of adopted children. In current law, placement means that the child is in the physical custody of the adoptive parent. The substitute changes it to mean the assumption and retention by the insured of a legal obligation for total or partial support of a child in anticipation of adoption.

#### MISSOURI HEALTH INSURANCE POOL

The substitute makes several changes to the laws regarding the Missouri Health Insurance Pool, known as the high-risk pool. The substitute:

(1) Adds the term "federal defined eligible individual" as it relates to the health insurance pool;

(2) Adds two members to the board of directors;

(3) Designates as eligible for pool coverage individuals who are residents of Missouri and who provide evidence of: (a) refusal

by one insurer to issue substantially similar insurance for health reasons; or (b) refusal by an insurer to issue insurance except at a rate exceeding 150% of the standard risk rate;

(4) Creates a qualified plan that will comply with the federal Trade Adjustment Assistance Reform Act of 2002;

(5) Requires insurers to inform a person of the existence of the high-risk pool and how to apply for coverage when the person is affected by a change in the insurer's underwriting, such as the insurer putting new limitations on coverage or increasing premiums;

(6) Defers, for three years, the deductions from premium taxes that may be taken for high-risk pool participation assessments, starting in the 2005 tax year;

(7) Makes eligible for pool coverage persons who terminated coverage in the pool less than 12 months prior, persons on whose behalf the pool has paid out \$1 million in benefits, and persons receiving treatment for drug or alcohol abuse. Under current law, these persons are ineligible for pool coverage;

(8) Allows persons who do not maintain residency in Missouri to be terminated at the end of the policy period;

(9) Changes the percentage limit on pool rates from 200% to 150% of the rates applicable to individual standard risks; and

(10) Changes the time within which a person has to apply for pool coverage from 60 days to 63 days in order to have a waiver of pre-existing condition exclusions.

#### SMALL EMPLOYER HEALTH INSURANCE

The substitute amends the laws regarding the Small Employer Health Insurance Availability Act. The substitute:

(1) Adds the terms "creditable coverage," "excepted benefits," "health status-related factor," and "medical care" as they relate to the Small Employer Health Insurance Availability Act;

(2) Modifies the definition of "small employer" as it pertains to a group health plan to include political subdivisions. A small employer is one who employs two to 50 eligible employees. Under current law, a small employer has three to 25 employees;

(3) Modifies conditions under which small employer health benefit plans are not renewable;

(4) Lists conditions under which small employer carriers can discontinue a particular type of small group health benefit plan and discontinue all small employer health insurance coverage;

(5) Repeals the requirement for small employer carriers electing to non-renew all of its small employer health plans in the state to provide certain types of notice;

(6) Allows small employer carriers offering coverage through a network plan not to offer coverage to an eligible person who no longer lives or works in the service area or to a small employer who no longer has an enrollee in the plan who lives or works in the service area;

(7) Requires small employer carriers to offer all health benefit plans they actively market to small employers in the state. Current law requires small employer carriers to offer at least two health benefit plans: a basic and a standard health benefit plan;

(8) Changes the way small employer health benefit plans can define pre-existing conditions. The substitute specifies that a pregnancy existing on the effective date of coverage is not considered a pre-existing condition;

(9) Changes the requirement that creditable coverage be continuous from 30 days prior to the effective date of new coverage to a date not less than 63 days prior to application for new coverage;

(10) Establishes cases where small employer carriers are prohibited from imposing any pre-existing condition exclusion; and

(11) Abolishes the Missouri Small Employer Reinsurance Program on December 31, 2005. The program will not take on any risk after October 1, 2004.

#### OTHER PROVISIONS

In other provisions regarding insurance, the substitute:

(1) Repeals the sunset clause on a section of law governing the liquidation of insurance companies. This provision is currently set to expire on December 31, 2005. The provision allows an estimation of contingent liabilities to be used to fix creditors' claims during the liquidation process. It also requires a reinsurer's payment to be made directly to the liquidator, except where the contract specifically provides for another payee or where another insurer assumes the ceding insurer's policy

obligations;

(2) Changes the definition of "renewal" as it applies to automobile insurance. Any automobile insurance policy with a term of less than six months or with no fixed expiration date will be considered a six-month policy. Under current law, the default term is 12 months;

(3) Repeals the bond requirement for acquiring a license to sell surplus lines of insurance;

(4) Amends the formula used to determine extraordinary dividends for shareholders in insurance holding companies; and

(5) Grants a right of subrogation to public entities that self-insure for their health care benefits when the entity pays the medical bills of the covered person and there is third-party liability. The public entity may require the covered person to assign to the public entity his or her claim or cause of action against the third party.

FISCAL NOTE: Estimated Net Cost on General Revenue Fund of \$0 to \$10,620,676 in FY 2005, FY 2006, and FY 2007. Does not include unknown savings relating to insurance subrogation rights. Estimated Net Income on Other State Funds of Up to \$59,821 in FY 2005, Up to \$63,221 in FY 2006, and Up to \$63,221 in FY 2007. Does not include unknown savings relating to subrogated insurance claims.

PROPOSERS: Supporters say that it's difficult to help everyone with the state's financial constraints, so we are forced to make tough choices. Removing mandated health coverage will allow employers to provide a "bare bones" health benefit package, as opposed to offering nothing at all. A 1% increase in the average health insurance premium causes 3,500 to 5,000 Missouri citizens to lose their health benefits altogether. Currently, these mandates apply to only 38% of the people insured, but everybody has to pay more for their health benefits as a result. Regarding the Property and Casualty Insurance Guaranty Association, the changes are a result of model language from the National Conference of Insurance Guaranty Funds. Regarding the Department of Insurance fees, the department already collects fees that cover all of its expenses, plus it adds on a "tip" of 15%. This money is used, in part, to pay above-market salaries to department staff. There are department staff who are paid considerably more than counterparts at other agencies. The bill reduces this "tip" to 5%. Regarding the Small Employer Health Reinsurance Program, only two companies used it last year, and none use it currently. There are administrative costs from this unused program, so it should be repealed and the money

transferred to fund the high-risk pool. Regarding the bonding required with surplus lines of insurance, 38 states have already repealed this bonding requirement. It is an unnecessary burden on these insurance producers. Regarding extraordinary dividends, the changes will allow insurance holding companies to shift assets among their holdings and allow them to better utilize all of their capital assets.

Testifying for the bill were Representative Luetkemeyer; St. Louis Area Business Health Coalition; Missouri Property and Casualty Guaranty Association; Missouri Association of Independent Insurers and Brokers; Missouri Insurance Coalition; Coventry Health Care; Blue Cross/Blue Shield of Missouri; Safety National Insurance Company; Missouri Association of Realtors; Missouri Association of Health Plans; and United Healthcare of the Midwest.

OPPONENTS: Those who oppose the bill say that removing the mandated coverages would result in employers selecting health insurance that covers very little. This will cost people more in the end. When preventive treatment is not provided, such as mammograms, then everybody pays the price. These measures have been shown to be cost effective. Beyond the costs of surgery and hospital stays, treatments such as cancer screenings save lives. In addition, many other illnesses are so rare and expensive to treat that there would be no coverage for them without a mandate. The Mandated Benefit Review Commission is just bad public policy and would open up opportunities for abuse and discrimination.

Testifying against the bill were Missouri State Chiropractors Association; Jewish Federation of St. Louis; National Association of Social Welfare; Eastern Missouri Psychiatric Society; and American Cancer Society.

OTHERS: Others testifying on the bill say it brings the state into compliance with federal regulations. Regarding the reinsurance option, insurers are all covering their own losses, so currently no insurers are using the program. Regarding the notification to uninsured people about the high-risk pool, most insurers already comply voluntarily. Regarding the use of genetic information by insurers, federal regulations already limit the use of this information. Regarding the changes to the high-risk pool, the changes will allow more people access to the pool. However, it would create a hardship if the number of pool members were to increase dramatically. To avoid this problem, we need to create a sustainable funding mechanism. The bill delays these costs for three years by deferring the credits allowed for contributions to the high-risk pool.

Others testifying on the bill was Missouri Health Insurance Pool.

Richard Smreker, Senior Legislative Analyst