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FISCAL IMPACT REPORT

SPONSOR: Gubbels DATE TYPED: 2/15/01 HB 406
 SHORT TITLE: Self-Insurance Health Care Act SB _____
 ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		Indeterminate			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: Senate Bill 209
 Relates to: Senate Bill 911 & House Bill 275

SOURCES OF INFORMATION

LFC Files
 Public Regulatory Commission, Insurance Division (PRC)
 New Mexico Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

The stated purpose of House Bill 406 (*Self-Insured Health Care Act*) is to provide small employers with the ability to provide affordable, quality health insurance to employees by pooling small employer purchasing power and improving the state's economy by making affordable health insurance available to small business employees.

Significant Issues

Section 2 of the bill establishes definitions that are used in the act.

Section 3 of the bill describes the purpose of the act as affording smaller employers with affordable, quality health insurance to employees by pooling their purchasing power.

Section 4 establishes the criteria necessary for plan certification by the PRC Superintendent of Insurance.

Section 5 outlines the powers and duties of the PRC Superintendent of Insurance.

Section 6 outlines self-insured health care plan requirements.

Section 7 describes plan insolvency protections.

Section 8 mandates that the liability of each employer for plan obligations will be individual, several, and proportionate but not joint. Each employer may have to pay actual losses and expenses incurred while the policy was in force. Each policy has to contain a statement of this fact.

Section 9 outlines plan termination provisions.

Section 10 mandates annual reports and triennial actuarial reports.

Section 11 prescribes penalties for failure to comply with the Self-Insured Health Care Act.

PERFORMANCE IMPLICATIONS

According to the PRC, this bill will adversely affect the Insurance Division's ability to monitor the solvency of self-insured entities providing health insurance to NM citizens and will prevent the Insurance Division from applying unfair trade practices and unfair claims practices laws to self-insured health care plans.

If the self-insured health care plan is set up on a managed care model, certain protections of the Patient Protection Act, NMSA Chapter 59A, Article 57, will apply, but if the plan is implemented as an indemnity plan, no protection will be afforded by that Act or any other consumer protection provision of the Insurance Code.

FISCAL IMPLICATIONS

The title header for House Bill 406 specifies an appropriation. However, no appropriation is included in the body of the bill.

Premium taxes are currently being collected on all health insurance policies. According to the PRC, this tax revenue to the general fund totaled approximately \$11.75 million in 1999. Employers moving from an insured program to a self-insured program, as permitted in this bill, will no longer pay premium taxes. The amount of lost revenue will depend upon the number of employers electing to form/join self-insured health care plans.

ADMINISTRATIVE IMPLICATIONS

The PRC Superintendent of Insurance is responsible for overseeing this program. New or existing PRC staff will be required to become familiar with a new self-insurance regulatory scheme and to administer it in addition to existing insurance regulation provisions.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

Senate Bill 91, Health Care Act, creates a program that ensures health care coverage to all New Mexicans through a combination of public and private financing and attempts to control escalating health care costs. **House Bill 275** amends the New Mexico insurance code to authorize catastrophic group health insurance policies to be issued to small employers.

Senate Bill 209 Duplicates this bill.

According to the PRC, this bill relates to with NMSA Sections 59A-1-8.1 and 59A-15-20, which currently authorizes the Superintendent of Insurance to address self-insured multiple employer health care plans by rule-making.

TECHNICAL ISSUES

This bill is not part of the New Mexico Insurance Code, Chapter 59A NMSA. If codified elsewhere in the NMSA, the PRC Superintendent of Insurance's authority to administer and promulgate regulations for the Self-Insured Health Care Act could be adversely affected.

Numerous technical flaws and ambiguities must be addressed prior to enacting this bill. Several examples are listed below:

- Several key terms in the bill are undefined or poorly defined and many key elements of consumer protection for beneficiaries of health insurance coverage are not included in this bill.
- The bill title contains the phrase, "making an appropriation," but there is no appropriation language in the bill.
- Section 2 defines "fund," as the "self-insured health care fund," a term that is never used in the bill. The "self-insured health care guarantee fund," is used in one section of the bill, but is not defined.
- The definition of "group insurance association" in Section 2 conflicts with the language in Section 4A.
- The definition of "self-insured health care plan" in Section 2 conflicts with Section 4A. In the former, it is defined as a plan established by two or more employers. In the latter, it is stated that a plan may only be established by a "group insurance association."
- Section 3 of the bill describes the purpose of the bill as providing "small employers the ability to provide affordable quality health insurance to employees." There is no definition of small employer in the bill and the PRC stated that self-insured programs are not insurance (as stated in the bill). Instead, they are considered employee benefit plans.
- The terminology in Section 4B, page 3, line 14, referencing "authorized administrator or service company" is ambiguous. Authorized "service company" is not defined.
- The language outlining the method for making up shortfalls in insolvent plans is described in Section 8. It requires an assessment on a "pro rata earned premium basis." The language appears ambiguous since it is not clear which employers are to be assessed, nor is it clear which premiums are to be counted in either the numerator or the denominator of the fractional part to be paid by each employer.
- Section 7 of the bill creates a fund to receive deposits from plans, but there is no language to indicate where the fund is to be created.
- Section 7E uses the undefined term "insolvency termination". Section 9 also refers to termination of a plan, but does so in terms that clearly refer to a

voluntary wind-down of a plan by the trustees.

OTHER SUBSTANTIVE ISSUES

According to the Health Policy Commission, with appropriate controls and oversight, this can provide a cost effective avenue for businesses, especially small employers.

According to the New Mexico Health Policy Commission (HPC), in Section 8, where employers in the plan may incur a contingent liability, this provision could bankrupt small employers. At the least, it may discourage small employers from participating in a plan. Regular employer-based insurance plans only place a premium liability on employers. Any plan liabilities are absorbed by the insurance company, not the employer.

This bill requires an actuarial review every three years. However, an annual review may be appropriate, especially for the first few years of operation.

According to the PRC, if self-insured health care plans are established on a managed care model, certain protections of the Patient Protection Act, NMSA Chapter 59A, Article 57, will apply. However, if such plans are implemented as indemnity plans, no protection will be afforded by the Patient Protection Act, or any other consumer protection provision of the Insurance Code.

The "self-insured health care guarantee fund" as described in this bill does not guarantee that benefits will be paid. The effects of an insolvency of a self-insured health care plan could effect employees and their dependents, because the mechanism of assessing employers to cover any shortfall is uncertain, and there is no other backup provide in this bill. Additionally, the Superintendent is required to permit insolvent plans to continue operations for several months, if they make minimal efforts to improve, thus risking even greater shortfalls.

POSSIBLE QUESTIONS

Section 7E indicates that in the event of an insolvency termination, funds remaining from the deposit "that exceed the amount needed to make the insolvent plan solvent or meet the terminal liability shall be returned to the trustees." If the trustees were responsible for the insolvency because of gross incompetence, is it appropriate to return funds to them?

How would this bill affect out-of-state associations?

ALTERNATIVES

According to the PRC, safer alternatives are available under the Insurance Code to employers wanting to establish a nonprofit health care plan for their employees.

LG/njw