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F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 1/28/10
SPONSOR Picraux **LAST UPDATED** **HB** 96

SHORT TITLE Guaranteed Issue of Health Insurance **SB**

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	Possible, but indeterminate amount*	Possible, but indeterminate amount*	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)
*See fiscal impact

SOURCES OF INFORMATION
LFC Files

Responses Received From
Health Policy Commission (HPC)
Human Services Department (HSD)
Public Regulation Commission (PRC)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 96 proposes to amend the Health Maintenance Organization Law, the Nonprofit Health Care Plan Law, and other sections of the New Mexico Insurance Code to provide for guaranteed issue of health coverage without permanent exclusion of coverage for preexisting conditions.

The bill includes the following provisions:

- By January 1, 2011, a health insurer shall issue coverage to any individual who requests and offers to purchase the coverage without permanent exclusion of preexisting conditions;
- A health insurer may impose a waiting period not to exceed six months before payment for any service related to a preexisting condition;
- A health insurer may continue until renewal an individual policy in existence on January 1, 2011 that has a permanent exclusion of payment for a preexisting condition. Upon renewal of that policy, and at the sole discretion of the insured, may opt to continue the existing individual policy with the exclusion of payment for the preexisting condition; and
- A health insurer shall ensure that an insured's privacy and confidentiality are protected and made applicable to individual policies, similar to privacy requirements pursuant to the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 for other policies.

These provisions would apply to health insurers that provide group health insurance pursuant to Chapter 59A, Article 22 NMSA 1978, health insurers that provide group health insurance pursuant to Chapter 59A, Article 23 NMSA 1978, health maintenance organizations that provide coverage for health care services pursuant to the Health Maintenance Organization Law, and health insurers that provide coverage pursuant to the Nonprofit Health Care Plan Law.

The bill includes the following definitions:

- "Coverage" does not include short-term, accident, fixed indemnity, specified disease policy or disability income, limited-benefit, credit, workers' compensation, automobile, medical or other insurance under which benefits are payable with or without regard to fault and that is required by law to be contained in any liability insurance policy;
- "Health insurer" means a person duly authorized to transact the business of health insurance in the state pursuant to the Insurance Code but does not include a person that only issues a limited-benefit policy intended to supplement major medical coverage, including Medicare supplement, long-term care, disability income, disease specific, accident-only or hospital-indemnity-only insurance policies; and
- "Preexisting condition" means a physical or mental condition for which medical advice, medication, diagnosis, care or treatment was recommended for or received by an applicant for health insurance within six months before the effective date of coverage, except that pregnancy is not considered a preexisting condition for federally defined individuals.

FISCAL IMPLICATIONS

The New Mexico Medical Insurance Pool (NMMIP) was established in 1987 by the Legislature to provide access to health insurance coverage to residents of New Mexico who are denied health insurance or considered uninsurable, often due to pre-existing conditions. NMMIP is supported by assessments paid by insurance carriers doing business in New Mexico. The Legislature authorized a tax credit for insurance carriers for a portion of the NMMIP assessment. If the need for NMMIP is eliminated or reduced, then there may a reduction in the amount of credit claimed and a net increase in taxes paid by insurance carriers. The amount of additional taxes that could be collected is unquantifiable as the bill does not address what would become of the NMMIP if the bill is passed.

According the Human Services Department (HSD), although there is no fiscal impact to HSD, under the provisions of the bill, the underwriting risk and benefit of this benefit segment could be spread to the group market.

A report by Milliman, Inc., an independent actuarial and consulting firm, found that enactment of guarantee issue laws in the absence of a requirement that individuals purchase coverage may provide an incentive to people to defer seeking coverage until they have health problems – which may unfairly penalize those who are currently insured. According to the report, states that implemented guaranteed issue saw a rise in insurance premiums, a reduction of individual insurance enrollment and no significant decrease in the number of uninsured.

SIGNIFICANT ISSUES

Guaranteed issue already exists in the large- and small group market by federal law. Guaranteed issue in the individual market is designed to make health insurance more accessible by ensuring that individuals seeking coverage are not rejected by commercial insurers and are able to obtain coverage even if they have a pre-existing condition.

In 1996, the federal Health Insurance Portability and Accountability Act (HIPAA) provided "small employer groups" with the protection of guaranteed issue and policy renewability; however, HIPAA did not provide protections of guaranteed issue in the individual market. Individuals can be rejected for insurance coverage due to information from:

1. the individual applicant's general and medical information that reveals a pre-existing condition based on diagnosis or treatment/prescriptions provided;
2. the Medical Information Bureau (a clearinghouse that provides data on health insurance applicants from reports by insurance companies discovered from prior applications, although applicants cannot be solely declined based on information from the MIB); or
3. a consumer's report.

Guaranteed issue regulations attempt to increase access to health insurance by ensuring that high-risk individuals are not denied coverage or charged premiums higher than they can afford. However, research indicates that average premiums and premiums paid by low-risk individuals may increase due to cost shifting from high-risk individuals. As a result, the number of high-risk individuals covered by health insurance may increase but the number of low-risk individuals may decline due to higher premium costs.

In New Mexico, in 2008, of those insured, 46.6% were covered through employers; 33.0% were covered through government health insurance (Medicare or Medicaid); and 6.3% were covered through military health care. Only about 7.5% of the insured were covered in the individual market in New Mexico in 2008, and were not protected by guaranteed issue rights.
(Source for coverage statistics: http://www.census.gov/hhes/www/hlthins/historic/hihistt4.xls)

This bill does not address affordability. The Legislature authorized the New Mexico Medical Insurance Pool (NMMIP) in 1987 to provide access to health insurance coverage to residents of New Mexico who are denied health insurance and considered uninsurable, often due to pre-existing conditions. The NMMIP provides coverage that is affordable and, for some, provides subsidized premiums. Individuals, who are offered coverage by NMMIP, only pay 125% of the standard rate – the standard rate is a rate that would normally be charged for a healthy individual. Capping the premium that can be offered to an individual in the NMMIP at 125% of the standard rate, and reduces the amount insurers would otherwise charge for the higher risk client.

Thirty-five states have high-risk pools – similar to the NMMIP; none of those states have guaranteed issue for all in the individual market. Maine, Massachusetts, New Jersey, New York, and Vermont require insurers in the individual market to have guaranteed issue. Only one state with a high-risk pool tries to provide a seamless system. In the state of Washington, insurers in the individual market must guarantee issue all products to applicants achieving a minimum score on a state mandated health status questionnaire (or health screen). The intent of the legislation was a rejection rate that would encompass the top 8% of least healthy individuals. Those applicants who are not eligible for guaranteed issue plans are referred to the high-risk pool.

In most states, community rating and guaranteed issue regulations are combined. New Mexico imposes an adjusted community rating regulation on insurers. Section 59A-18-13.1 NMSA 1978, requires that every health insurer that provides primary health insurance or health care coverage or covering major medical expenses shall, in determining the initial year's premium this is charged for an individual, use only the rating factors of age, gender, geographic area of the place of employment and smoking practices, except that for individual policies the rating factor of the individual's place of residence may be used instead of the geographic area of the individual's place of employment.

In determining the initial and any subsequent year's rate, the difference in rates in any one age group that may be charged on the basis of a person's gender shall not exceed another person's rates in the age group by more than 20 percent of the lower rate, and no person's rate shall exceed the rate of any other person with similar family composition by more than 250 percent of the lower rate, except that the rates for children under the age of 19 or children aged 19 to 25 who are full-time students may be lower than the bottom rates in the 250 percent band. The rating factor restrictions shall not prohibit an insurer, society, organization or plan from offering rates that differ depending upon family composition.

PERFORMANCE IMPLICATIONS

It is not clear if the purpose of the bill is to reduce the number of uninsured in New Mexico, or if the purpose is to guarantee people with pre-existing conditions the ability to obtain health coverage in the individual market.

COMPANIONSHIP, RELATIONSHIP

Companion to HB32 "Health Insurance Small Employer Definition," Relates to SJR2 "Allow Health Care Decisions" which prohibits the imposition of an individual mandate to purchase coverage in the individual market, and relates to HB 31 "Health Insurer Guaranteed Issue," which also guarantees issue with an allowable 6 month pre-existing condition waiting period and look-back period, but does not specify all of the types of health coverage affected under the New Mexico Insurance Code. As such, HB 96 is more comprehensive and specific in its proposed amendment to the Insurance Code.

TECHNICAL ISSUES

According to the Superintendent of Insurance at the PRC, Section 1(B) of the bill allows insurers to require up to a six-month waiting period for coverage of services related to a preexisting condition. The bill, however, does not appear to prohibit the insurer from offering a policy of coverage that is more expensive, but includes immediate coverage for services related to the preexisting condition. If that is not the intent, revised language may be in order.

OTHER SUBSTANTIVE ISSUES

The PRC's Superintendent of Insurance notes that guaranteed issue absent other health care reforms also results in a situation in which risk cannot be predicted by the insurer. In some states with guaranteed issue, such as Washington, this resulted in an exodus of insurers offering individual coverage. Other states eliminated guaranteed issue to bring insurers back into the market. One way to alleviate the dangers of unanticipated risk is through a risk transfer model, such as an insurance exchange, where carriers would resolve claims amongst themselves or re-allocate risks at year's end, based upon that year's experience.

The bill requires coverage for preexisting conditions, unless the individual, upon renewal of an existing policy entered into prior to the proposed law, requests coverage that does not include services related to a preexisting condition. The freedom given to the individual with a current policy is not afforded individuals who request coverage after the effective date of the proposed law.

According to the information from the Health Policy Commission (HPC), the U.S. Census Bureau reports that in 2008, 23.7% of New Mexican's were uninsured. The State's uninsured rate was above the national rate of 15.4%. New Mexico had the second highest uninsured rate in the nation preceded only by Texas at 24.4% using a three-year average from 2006 to 2008.
(Source: http://www.census.gov/hhes/www/hlthins/hlthin08/statecomp08.xls)

Also from the HPC, Research Related to Guaranteed Issue:

In 2004, the Robert Wood Johnson Foundation (RWJF) produced a research synthesis entitled, Expanding the Individual Health Insurance Market: Lessons from the State Reforms of the 1990s. The synthesis weighs available research findings, draws conclusions based on those findings, and notes where evidence is lacking or inconclusive. The synthesis draws primarily from studies that meet professionally accepted standards for social science research; however, other studies that may not be as strong methodologically but have helped influence how people think about state insurance reforms are also examined. The following are lessons or findings from RWJF's research synthesis on the state reforms of the 1990's:

- In states with comprehensive underwriting reforms (guaranteed issue combined with guaranteed renewability and strict limits on pre-existing condition exclusions) individual insurance became more available for purchase.
- Comprehensive reforms resulted in some carriers leaving the individual market, particularly in states where guaranteed issue was combined with community rating, and possibly fueled faster HMO penetration.
- Coverage was not necessarily available to everyone, even in states with guaranteed issue. Most states did not require guaranteed issue of every policy an insurer offered and some permitted insurers to impose a prior coverage requirement.
- Average premiums and premiums paid by healthier people increased in states with comprehensive reforms (community rating combined with guaranteed issue), while premiums paid by unhealthy or high-risk people decreased. Premium increases were more modest when reforms were phased in. Less aggressive reforms, such as rating bands, had no clear effect on premiums.
- Reforms that make insurance more available and affordable for high-risk people can increase adverse selection problems for insurers. Adverse selection did occur after community rating was introduced, but not as much as expected, in part due to risk-

spreading mechanisms and because many unhealthy or high-risk people still could not afford coverage.

- Although policies were more available for purchase, more people did not necessarily buy them. States with comprehensive reforms (including a combination of guaranteed issue, community rating and other rating restrictions) experienced a decrease, not an increase, in overall coverage rates.
- States with less comprehensive reforms experienced modest or no changes in coverage rates. Limited evidence suggests that high-risk people were more likely to obtain coverage in states with reforms.

(Source: http://www.rwjf.org/pr/product.jsp?id=20114)

ALTERNATIVES

Individuals who are rejected for insurance have an alternative already in statute, the New Mexico Medical Insurance Pool (NMMIP).

If this bill were to be adopted, the need for NMMIP may be eliminated or diminished. However, the NMMIP statutes could be changed to only cover catastrophic health coverage that is over- and beyond the guaranteed issue policies that would be offered in the individual market.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Individuals in New Mexico will continue to be rejected for coverage when seeking insurance policies in the individual market based on health status, and will either forego coverage or seek coverage in the New Mexico Medical Insurance Pool. Other individuals will continue to be offered coverage in the individual market, but with permanent exclusion of preexisting conditions.

DL/mt