House Research
Act Summary

CHAPTER: 17 **SESSION:** 2005 Regular Session

TOPIC: Conforming to federal Medicare prescription drug coverage

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Overview

This act changes Minnesota laws to conform or respond to the recent changes in federal law involving Medicare prescription drug coverage (Medicare Part D).

Medicare Part D coverage is voluntary, requires payment of a premium, and will be available only through private sector stand-alone prescription drug plans (PDPs) or as part of a "Medicare Advantage" plan (managed care or preferred provider plan). Medicare Part D coverage will become available January 1, 2006.

Article 1 makes technical changes in state law involving Medicare supplement ("Medigap") insurance.

Article 2 creates a procedure for licensing and solvency regulation of stand-alone prescription drug plans that could provide prescription drug coverage under Medicare Part D.

Article 3 makes miscellaneous technical conforming changes.

Article 1: Federally Conforming Changes in Medicare-Related Coverages

Most of this article involves the new federal requirements that (1) new Medigap policies must not be sold with prescription drug coverage after 2005; and (2) existing Medigap policies that cover prescriptions must drop the drug coverage if the insured chooses to enroll in Medicare Part D.

1 **Suspension based on entitlement to medical assistance.** Provides that a suspended Medicare supplement policy must be replaced by an equivalent policy (current law), except that it must not cover outpatient prescription drugs if the insured has enrolled in Medicare Part D.

2 **Guaranteed renewability.** Makes technical formatting changes. Provides that guaranteed renewability is satisfied if a policy is renewed without coverage of outpatient prescription drugs, if the removal of the drug coverage is required by the new federal law.

3 **Termination of coverage.** Provides that receipt of outpatient drug benefits is not counted in calculating a continuous loss for purposes of extension of coverage beyond a policy's termination date. Clarifies existing language.

4 **Prescription drug coverage.** Specifies what happens to drug coverage under Medicare supplement policies in various situations. The general principles are:

(1) Enrollees may keep that existing drug coverage if they choose not to enroll in Medicare Part D;

(2) No new Medicare supplement policies that cover outpatient prescription drugs may be issued; and

(3) Persons who choose to enroll in Part D may renew their existing Medicare supplement policy, but without the drug coverage and with a corresponding premium reduction.

Paragraph (d) is a "catch-all failsafe" provision to be sure our laws require compliance with all federal requirements involving Medicare Part D.

5 **Notice of lack of drug coverage.** Amends the required notice that a policy does not cover drugs to include the effects of the federal changes. Removes obsolete language.

6 **Guaranteed issue for eligible persons.** This very complex section of existing law deals with eligibility for guaranteed issue of Medicare supplement insurance. Makes a clarifying change and a change to conform to federal law in paragraph (a), which deals generally with what guaranteed issue means. Makes changes to conform to the federal name change from Medicare+Choice to Medicare Advantage and adds a new clause (7) to paragraph (b), which lists all the ways of being eligible for guaranteed issue. The new clause (7) creates a new way to be eligible for guaranteed issue, which involves a person who had Medicare supplement insurance with prescription drug coverage, enrolls in Medicare Part D, and therefore needs a new Medicare supplement policy without drug coverage. Makes federally required changes in paragraph (c), which deals with when a guaranteed issue period begins and ends. Makes federally required changes in paragraph (e), which determines the kind of Medicare supplement policy in which a person has guaranteed issue rights to enroll.

7 **Definitions.** Makes a variety of technical and clarifying changes in definitions. Creates a new definition of outpatient prescription drugs to clarify how that term relates to Medicare coverage.

8 **Prohibited policy provisions.** Permits Medicare supplement policies issued before January

1, 2006, to continue to cover outpatient prescription drugs even though Medicare Part D covers them. This recognizes that Medicare Part D is voluntary, and some people will choose to retain their private drug coverage instead of enrolling in Part D.

Medicare prescription drug benefit. Eliminates language made obsolete by the federal Medicare changes.

Extended basic Medicare supplement plan; coverage. Conforms to federal law by prohibiting sale of a new Medicare supplement policy that covers outpatient prescription drugs after the end of 2005. This section applies to the extended basic plan. (Medicare supplement insurance in Minnesota is either the basic or extended basic plan.)

Basic Medicare supplement plan; coverage. Same as the preceding section, but applies to the basic plan.

Medicare select policies and certificates. Divides this existing law into subdivisions and paragraphs, for clarity and future convenience. Conforms to federal law by prohibiting sale of Medicare Select products with drug coverage after 2005. (Medicare Select is a form of Medicare supplement coverage that has a limited network of providers but is not an HMO-Medicare product.)

Loss ratio standards and refund provisions. Makes technical clarifications. Clarifies how the deletion of prescription drug coverage and related premium reductions will be handled for purposes of regulation. Provides a catch-all failsafe requirement that enrollees be given all federally required notices.

Revisor instruction. Instructs revisor to reorder definitions.

Effective date. Effective January 1, 2006, except for certain provisions that need to be in place to prepare for that date.

Article 2: Regulation of Stand-Alone Medicare Part D Prescription Drug Plans

This article enacts a version of the Limited Health Service Organization Model Act, recommended by the National Association of Insurance Commissioners (NAIC). This type of state law allows an insurer to sell a limited type of stand-alone coverage in the state, without being required to have a full license to sell health insurance in the state generally. The article enacts this NAIC model law with changes to limit it to apply only to stand-alone Medicare prescription drug plans ("PDPs"), to limit it to only the types of regulation permitted for those PDP plans by federal law, and to adjust the solvency requirements to account for inflation. Under current law, Minnesota has no such limited license, so insurers wanting to offer PDPs here would need to get a full insurance license and submit to full state insurance regulation, or seek a federal waiver from state regulation and subject themselves to federal regulation.

1 **Definitions.** Defines terms. The key definition is that of "limited health service," which limits this act to insurers that want to offer Medicare Part D prescription drug plans (PDPs).

2 **Certificate of authority required.** Requires insurers offering PDPs to be licensed under this act. They also still have the option of applying for a full insurance license.

3 **Application for certificate of authority.** Lists what has to be in an application for licensure.

4 **Issuance of certificate of authority.** Requires the commissioner to approve or deny an application within 90 days, or the application is deemed approved. Requires the commissioner to issue a license if the applicant meets the requirements. Permits the applicant to appeal a denial of the application.

5 **Filing requirements for authorized entities.** Provides a way for an entity that is already licensed as an insurer in this state under a law that does not permit offering a PDP plan to use a simplified application process to apply for approval from the commissioner to do so under this act.

6 **Material modification.** Requires filing with the commissioner for approval any modifications in the information previously filed.

7 **Evidence of coverage.** Requires that PDP plans provide enrollees with the evidence of coverage required under federal law.

8 **Construction with other laws.** Provides an exemption from other insurance laws unless another law specifically says it applies to these organizations. The exemption does not apply to the insurance company holding act in chapter 60D. Provides that operating a PDP plan is not a "healing art" and that PDP plans are not covered by laws regulating advertising by health professionals.

9 **Nonduplication of coverage.** Permits other group health insurance to exclude coverage of things covered by PDPs if the group is covered separately by group PDP coverage for those benefits.

10 **Complaint system.** Requires insurers issuing PDPs to comply with federal Medicare requirements regarding complaints from enrollees.

11 **Examination of organization.** Permits the commissioner to examine the records of an entity licensed under this act. Permits the commissioner to accept an examination report made by the commissioner of another state.

12 **Investments.** Requires the entity's financial assets to be invested under the guidelines that apply to health maintenance organizations (HMOs.)

13 **Agents.** Requires that PDP coverage be sold only through persons authorized to sell health

coverage in this state.

14 **Protection against insolvency; deposit.**

Subd. 1. Net equity. (a) Requires that entities maintain tangible net equity of the greater of $100,000 or 2 percent of its annual premium income, not to exceed the amount of capital and surplus required of a health insurance company.

(b) In addition, requires additional net equity of 25 percent of uncovered expenses in excess of $100,000.

Subd. 2. Definitions. Defines net equity and tangible net equity.

Subd. 3. Deposit. Requires a deposit of liquid assets of $50,000 plus 25 percent of required tangible net equity, but the required deposit cannot exceed $200,000. Specifies the status of the deposit.

Subd. 4. Waiver of net equity requirement. Permits the commissioner to waive the net equity requirement under certain circumstances, including a guarantee provided by a guaranteeing organization.

Subd. 5. Definition; uncovered expenses. Defines that term.

15 **Officers and employees fidelity bond.** Requires a fidelity bond or an equivalent deposit for that purpose. This protects against an insolvency caused by embezzlement and similar offenses committed by the company's employees.

16 **Reports.** Requires filing an annual financial report with the commissioner.

17 **Suspension or revocation of certificate of authority.** Provides the grounds and procedures involved in suspending or revoking a license under this act.

18 **Penalties.** Provides for administrative enforcement of this article by the commissioner.

19 **Rehabilitation, conservation, or liquidation.** Provides that insolvency of an entity licensed under this act is handled as insolvency of a regular insurance company. Provides that the obligations of these entities are not covered by the life and health insurance guaranty association, and that these entities are not assessable by that association.

20 **Effective date.** Provides a March 15, 2005 effective date for licensing procedures to begin, but under federal law no one can operate a PDP plan until 2006. Under federal law, an entity can apply for a federal waiver of state licensing of a PDP if there is no state licensing procedure available as of March 15, 2005.

Article 3: Technical and Conforming Changes

This article makes miscellaneous technical changes related to this act.

1 **Exceptions.** Updates references to federal Medicare laws.

2 **Medicare-related coverage.** Updates references to federal Medicare laws.

3 **Health maintenance organizations; community integrated service network surcharge.** Updates references to federal Medicare laws in a section involving the medical assistance surcharge.