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| Date: March 9, 2018 | POLICY ANALYSIS PREPARED FOR THE BOARD OF DIRECTORS |  OF NORTHERN LARIMER COUNTY |
| Staff: Alyson Williams | | |

SB18-136: HEALTH INSURANCE PRODUCER FEES AND FEE DISCLOSURE

Concerning fees for advising clients about the selection of an individual health plan.

Details

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| Bill Sponsors: | Senate – <i>Neville T. (R)</i> , Lundberg (R), Smallwood (R) and Tate (R) House – <i>Kraft-Tharp (D)</i> and <i>Sias (R)</i> , Humphrey (R) |
| Committee: | House Committee on Health, Insurance, & Environment |
| Bill History: | 2/27/2018- Introduced in House- Assigned to Health, Insurance, & Environment |
| Next Action: | Hearing in House Committee on Health, Insurance, & Environment |

Bill Summary

The bill allows an insurance producer or broker advising a client on individual health benefit plans to charge the client a fee if they do not receive a commission related to the plan selected and if they disclose the fee to the client. The commissioner of insurance shall promulgate rules regarding the fee and fee disclosure and must include a prohibition on charging a fee for assisting a client to enroll in Medicaid or the Children’s Health Insurance Plan (also known as the Child Health Plan Plus [CHP+] in Colorado).

Issue Summary

Insurance Brokers and Producers

Insurance producer is a broad term that encompasses both agents and brokers. In Colorado statute, a producer is defined as a one “who solicits or negotiates an application for health care insurance on behalf of a carrier.”¹ Brokers act for the consumer and are either reimbursed by the insurance company or compensated by the consumer.² An agent is typically only compensated by the insurance company or companies they work for.² State law currently mandates producers must disclose to their client if they will receive a commission from the carrier for their enrollment.¹ In Colorado during the 2014 enrollment period, approximately 31 percent of people that enrolled in a health plan through Connect for Health Colorado worked with a broker.³

Enrollment Commissions

In 2012, a provision in the Affordable Care Act known as the medical loss ratio (MLR) went into effect.⁴ Colloquially known as the 80/20 Rule, the MLR provision requires that if an insurance company spends less than 80 percent of individual and small-group premium dollars on actual health care (i.e. more than 20 percent on administrative costs), then they must rebate the excess funds back to members by September 30 each year.⁴ Due to the MLR provision, commissions are reduced as they are considered an administrative expense.

¹ C.R.S. 10-16-133

² Families USA (Sept. 2012). *Brokers and Agents and Health Insurance Exchanges*. Retrieved from http://familiesusa.org/sites/default/files/product_documents/Exchanges-Brokers-and-Agents.pdf

³ Spark Policy Institute (2014). *Connect for Health Colorado Marketplace Data Analysis*. Retrieved from <http://connectforhealthco.com/wp-content/uploads/2013/04/20140908-C4HCO-Marketplace-Analysis-from-Spark-Policy-Institute.pdf>

⁴ Norris, L. (Jan. 2018). *Billions in ACA rebates show 80/210 rule’s impact*. Retrieved from <https://www.healthinsurance.org/obamacare/billions-in-aca-rebates-show-80-20-rules-impact/>

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Similar Legislation

In 2017, Louisiana enacted legislation to allow brokers to charge consumers fees for their assistance with enrolling in a health insurance plan.⁵ The law does not limit the fees but requires the brokers to inform clients of the fees and that they could forgo the fee by utilizing a navigator or the federal marketplace. The same year, Tennessee also enacted a similar law that allowed the charging of fees by insurance producers if there is a qualified written agreement and there is no commission paid to the producer.⁶

This Legislation

This bill allows insurance producers to charge a client a fee for advising a client regarding the choice of an individual health benefit plan. This fee is conditional on the producer not receiving a commission from the carrier that offers the plan selected by the client and providing the client a written disclosure regarding the charging of the fee. The Commissioner of Insurance is to promulgate rules regarding the implementation and administration of these fees and fee disclosures. The rules must include a prohibition on the producer charging a client a fee to assist them in enrolling in Medicaid or the Children's Health Insurance Program.

This bill allows insurance brokers to charge a client a fee for advising a client regarding the choice of an individual health benefit plan offered on the exchange, Connect for Health Colorado. This fee is conditional on the producer not receiving a commission from the carrier that offers the plan selected by the client and providing the client a written disclosure regarding the charging of the fee. The Commissioner of Insurance may promulgate rules regarding the implementation and administration of these fees and fee disclosures. The rules must include a prohibition on the producer charging a client a fee to assist them in enrolling in Medicaid or the Children's Health Insurance Program.

Reasons to Support

Brokers would still be incentivized to work within the individual market as insurance companies are cutting commissions to brokers. Anecdotally, some brokers have been working with little to no pay in the individual market and this has resulted in them leaving the market. The incorporation of a fee could bring them back. Furthermore, brokers and producers would not be incentivized to sell plans where they are still offered commissions, which eliminates selection bias. By keeping brokers in the individual market with fees, it could decrease individual consumer call volume for troubleshooting the complexities with Connect for Health Colorado. Brokers and producers would feel more inclined to keep up with trainings and services involving the insurance marketplace if they receive reimbursement for assisting clients. To their clients, brokers may seem like a free service but insurers pay commissions and the costs associated with those commissions get passed to all insurance consumers. Therefore, the costs involved with producers and brokers get passed on to clients in some way or another regardless of whether it is a fee or through increases in premiums due to administrative costs.

Supporters

- Colorado Association of Commerce and Industry
- Colorado State Association of Health Underwriters
- National Association of Insurance and Financial Advisors
- State Farm Insurance Companies

Reasons to Oppose

⁵ Norris, L. (Dec 2017). *Louisiana health insurance marketplace: history and news of the state's exchange*. Retrieved from <https://www.healthinsurance.org/louisiana-state-health-insurance-exchange/#brokerfees>

⁶ Tennessee General Assembly (2017). *HB0428*. Retrieved from <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0428>

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Clients, who do not meet the eligibility rules for Medicaid or CHP+, may not be able to afford these fees. It can be difficult for clients up to 400 percent of the federal poverty level to afford the cost of premiums let alone an additional fee to utilize a broker. Brokers could move from operating like a public service, where everyone pays a little more for everyone to have access to brokers, to only those who can afford the brokers' fee receive marketplace assistance. If the consumer opts to access assistance through the broker, they may decide to enroll in the plan that compensates the broker with a commission so they do not incur that fee. This could be detrimental to the consumer if the plan with a fee associated best matches their coverage needs and/or financial needs. If the consumer does not access insurance coverage through a broker due to price there are different scenarios that could occur. One possibility is that the client could forgo health insurance altogether. Another option would be the person correctly enrolls in the marketplace on their own. Conversely, they unknowingly enroll in a plan that does not meet their needs or do not access the savings they were entitled to, such as advance premium tax credits. They could also opt to access assistance with the marketplace through navigators, like Larimer Health Connect. Some of these scenarios are not reassuring to opponents, as they can mean more consumer confusion in an already bewildering system.

Opponents

- AARP

About this Analysis

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.