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H.P. 941

House of Representatives, March 29, 2021

An Act To Prohibit Discriminatory Practices in Certain Health Insurance Policies

Received by the Clerk of the House on March 25, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative COLLINGS of Portland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §2452, sub-§1**, as enacted by PL 1991, c. 385, §11, is repealed
3 and the following enacted in its place:

4 **1. Discrimination prohibited; rating practices.** A policy of employee benefit excess
5 insurance may not discriminate unfairly among or against beneficiaries of the underlying
6 benefit plan, or treat conditions related to the Human Immunodeficiency Virus, or HIV,
7 more restrictively than other sicknesses or disabling conditions.

8 The following requirements apply to the rating practices of carriers providing employee
9 excess benefit insurance to small group health plans.

10 A. A carrier may not vary the premium rate due to the gender, health status, claims
11 experience or policy duration of the eligible group or members of the group or any
12 other rating factor not specified in this subsection.

13 B. A carrier may vary the premium rate due to family membership and participation
14 in wellness programs. The premium rate for a family must equal the sum of the
15 premiums for each individual in the family, except that it may not be based on more
16 than 3 dependent children who are less than 21 years of age. The superintendent may
17 adopt rules setting forth appropriate methodologies regarding rate discounts for
18 participation in wellness programs. Rules adopted pursuant to this paragraph are
19 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

20 C. A carrier may vary the premium rate due to geographic area in accordance with the
21 limitation in this paragraph. For all policies, contracts or certificates that are executed,
22 delivered, issued for delivery, continued or renewed in this State on or after October 1,
23 2021, the rating factor used by a carrier for geographic area may not exceed 1.5.

24 D. A carrier may vary the premium rate due to age, group size and tobacco use in
25 accordance with the limitations set out in this paragraph. A carrier that varies the
26 premium rate due to age must vary the premium rate according to a uniform age curve.
27 The superintendent shall adopt rules establishing a uniform age curve that is
28 substantially similar to the age curve in effect on January 1, 2019 under the federal
29 Affordable Care Act.

30 (1) For all policies, contracts or certificates that are executed, delivered, issued for
31 delivery, continued or renewed in this State on or after January 1, 2022, except as
32 provided in subparagraph (3), the maximum rate differential due to age and group
33 size filed by the carrier as determined by ratio is 5 to 1 to the extent permitted by
34 the federal Affordable Care Act. The limitation does not apply for determining
35 rates for an attained age of less than 19 years of age or more than 65 years of age.

36 (2) For all policies, contracts or certificates that are executed, delivered, issued for
37 delivery, continued or renewed in this State on or after October 1, 2021, the
38 maximum rate differential due to tobacco use filed by the carrier as determined by
39 ratio is 1.5 to 1, except that the carrier may not apply a rate differential pursuant to
40 this subparagraph when the covered individual is participating in an evidence-
41 based tobacco cessation strategy approved by the United States Department of
42 Health and Human Services, Food and Drug Administration.

1 (3) For all policies, contracts or certificates that are executed, delivered, issued for
2 delivery, continued or renewed in this State on or after October 1, 2021, the
3 maximum rate differential due to age filed by the carrier as determined by ratio is
4 3 to 1 for individuals 21 years of age and older on the first day of coverage under
5 the policy, contract or certificate. The variation in rate due to age must be
6 actuarially justified for individuals under 21 years of age consistent with the
7 uniform age curve adopted under this paragraph.

8 **Sec. 2. 24-A MRS §2452, sub-§3**, as enacted by PL 1991, c. 385, §11, is repealed
9 and the following enacted in its place:

10 **3. Review.** The review of employee benefit excess insurance forms, rates and filings
11 is subject to this subsection.

12 A. An employee benefit excess insurance form is not exempt from the review
13 provisions otherwise applicable under section 2412 on the ground that the form is
14 designed for insurance on a particular subject.

15 B. If at any time the superintendent has reason to believe that a filing does not meet
16 the requirements that rates not be excessive, inadequate or unfairly discriminatory or
17 that the filing violates any of the provisions of chapter 23, the superintendent shall
18 cause a hearing to be held. Hearings held under this subsection must conform to the
19 procedural requirements set forth in Title 5, chapter 375, subchapter 4. The
20 superintendent shall issue an order or decision within 30 days after the close of the
21 hearing or of any rehearing or reargument or within such other period as the
22 superintendent for good cause may require, but not to exceed an additional 30 days. In
23 the order or decision, the superintendent shall either approve or disapprove the rate
24 filing. If the superintendent disapproves the rate filing, the superintendent shall
25 establish the date on which the filing is no longer effective, specify the filing the
26 superintendent would approve and authorize the insurer to submit a new filing in
27 accordance with the terms of the order or decision.

28 C. When a filing is not accompanied by the information upon which the carrier
29 supports the filing or the superintendent does not have sufficient information to
30 determine whether the filing meets the requirements that rates not be excessive,
31 inadequate or unfairly discriminatory, the superintendent shall require the carrier to
32 furnish the information upon which it supports the filing.

33 **SUMMARY**

34 This bill establishes rating practices for employee benefit excess insurance, including
35 maximum rate differentials for age, group size and tobacco use. This bill requires the
36 Superintendent of Insurance to hold a hearing if the superintendent finds that a filing does
37 not meet the requirement that rates not be excessive, inadequate or discriminatory or that it
38 violates a prohibited trade practice or is fraudulent and establishes the procedure and
39 consequences for the hearing. This bill also requires the superintendent to require a carrier
40 to provide more information if the superintendent finds that the filing does not have
41 sufficient information to determine whether the filing meets the requirements.