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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1859

03/16/2015 Authored by Pierson, Christensen, Kresha, Koznick, Urdahl and others
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to health; permitting Minnesota residents to buy health coverage
1.3 approved in other states; requiring an independent cost-benefit analysis of
1.4 MNsure; requiring line controls testing of the information technology systems
1.5 used in MNsure three months prior to use by the public; modifying participation
1.6 requirements for health plans to be offered for sale through MNsure; limiting
1.7 the MNsure Board from increasing the premium withhold without legislative
1.8 approval; requiring an independent financial audit of MNsure; amending
1.9 Minnesota Statutes 2014, sections 62A.02, subdivision 7; 62V.03, by adding
1.10 a subdivision; 62V.05, subdivisions 2, 5; proposing coding for new law in
1.11 Minnesota Statutes, chapter 62A.

1.12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.13 Section 1. Minnesota Statutes 2014, section 62A.02, subdivision 7, is amended to read:

1.14 Subd. 7. **Filing by domestic insurers for purposes of complying with another**
1.15 **state's filing requirements.** A domestic insurer may file with the commissioner for
1.16 informational purposes only a policy or certificate of insurance that is not intended to be
1.17 offered or sold within this state. This subdivision only applies to the filing in Minnesota
1.18 of a policy or certificate of insurance issued to an insured or certificate holder located
1.19 outside of this state when the filing is for the express purpose of complying with the law
1.20 of the state in which the insured or certificate holder resides. ~~In no event may a policy~~
1.21 ~~or certificate of insurance filed under this subdivision for out-of-state use be issued or~~
1.22 ~~delivered in Minnesota unless and until the policy or certificate of insurance is approved~~
1.23 ~~under subdivision 2.~~

1.24 Sec. 2. [62A.026] RIGHT TO BUY AND SELL HEALTH COVERAGE
1.25 APPROVED IN OTHER STATES.

2.1 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in
2.2 this subdivision have the meanings given.

2.3 (b) "Commissioner" means the commissioner of commerce or the commissioner of
2.4 health, as appropriate, depending upon which commissioner would have authority over
2.5 the insurance company or health plan if it were subject to the laws of this state.

2.6 (c) "Health plan" has the meaning given in section 62A.011, subdivision 3, but
2.7 includes coverage described in clauses (6) and (10) of that subdivision, and without regard
2.8 to the references in that subdivision requiring the entities providing the health plan to be
2.9 licensed in or operating under the laws of this state.

2.10 (d) "Insurance company," "domestic," "alien," "foreign," and "state" have the
2.11 meanings given in section 60A.02. Insurance company includes a health maintenance
2.12 organization or health service plan corporation, whether nonprofit or for profit.

2.13 Subd. 2. **Purchase of a health plan permitted to be sold in another state.** (a)
2.14 Notwithstanding section 62A.02 or any other law to the contrary, any resident of this
2.15 state and any employer that employs residents of this state may purchase a health plan
2.16 that has not been approved by the commissioner, if the health plan is permitted to be sold
2.17 in any other state.

2.18 (b) Notwithstanding section 62A.02 or any other law to the contrary, any insurance
2.19 company, whether domestic, foreign, or alien, that is permitted to offer, sell, issue, or
2.20 renew a health plan in any other state under the laws of that state, may also do so with
2.21 respect to that health plan in this state. The insurance company need not have a certificate
2.22 of authority, license, or other authorization from the commissioner to do business in this
2.23 state. This paragraph does not exempt the insurance company from compliance with
2.24 chapter 303, relating to foreign business entities.

2.25 (c) Notwithstanding section 62A.02 or any other law to the contrary, any insurance
2.26 agent licensed or otherwise permitted to offer and sell health plans in this state or in a
2.27 state in which the health plan is permitted to be offered and sold, may offer and sell to a
2.28 resident of this state or to an employer that employs residents of this state any health plan
2.29 permitted to be offered and sold under paragraph (b) and is not, in connection with that
2.30 transaction, subject to the laws of this state regulating insurance agents.

2.31 (d) Notwithstanding section 62A.02 or any other law to the contrary, an insurance
2.32 company and a health plan offered, issued, sold, or renewed by the insurance company
2.33 under authority of this section are:

2.34 (1) not, in connection with that health plan, subject to the authority of the
2.35 commissioner in any respect, and the insurance company need not provide any filing or
2.36 notification to the commissioner;

3.1 (2) not, in connection with that health plan, required to comply with any law of
 3.2 this state relating to insurance companies or health plans, including, but not limited to,
 3.3 chapters 45 and 60A to 72C; and

3.4 (3) subject to the tax laws of this state, including chapter 297I, on the same basis
 3.5 as other insurance companies doing business in this state and other health plans sold in
 3.6 this state.

3.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.8 Sec. 3. Minnesota Statutes 2014, section 62V.03, is amended by adding a subdivision
 3.9 to read:

3.10 Subd. 4. **IT systems testing.** Prior to the beginning of each annual open enrollment
 3.11 period for MNsure, beginning in calendar year 2015, MNsure shall conduct line control
 3.12 testing of any information technology systems used in the application or enrollment
 3.13 processes that are to be used by consumers to ensure reliability, compatibility, and
 3.14 consumer confidence. The testing shall be conducted for at least three months before
 3.15 being made available for use by the public through the MNsure Web site.

3.16 Sec. 4. Minnesota Statutes 2014, section 62V.05, subdivision 2, is amended to read:

3.17 Subd. 2. **Operations funding.** (a) Prior to January 1, 2015, MNsure shall retain or
 3.18 collect up to 1.5 percent of total premiums for individual and small group market health
 3.19 plans and dental plans sold through MNsure to fund the cash reserves of MNsure, but
 3.20 the amount collected shall not exceed a dollar amount equal to 25 percent of the funds
 3.21 collected under section 62E.11, subdivision 6, for calendar year 2012.

3.22 (b) Beginning January 1, 2015, MNsure shall retain or collect up to 3.5 percent of
 3.23 total premiums for individual and small group market health plans and dental plans sold
 3.24 through MNsure to fund the operations of MNsure, but the amount collected shall not
 3.25 exceed a dollar amount equal to 50 percent of the funds collected under section 62E.11,
 3.26 subdivision 6, for calendar year 2012.

3.27 (c) Beginning January 1, 2016, MNsure shall retain or collect up to 3.5 percent of
 3.28 total premiums for individual and small group market health plans and dental plans sold
 3.29 through MNsure to fund the operations of MNsure, but the amount collected may never
 3.30 exceed a dollar amount greater than 100 percent of the funds collected under section
 3.31 62E.11, subdivision 6, for calendar year 2012.

3.32 (d) Any increase in the percent of total premiums retained or collected under
 3.33 paragraph (c) to fund the operations of MNsure must be approved in law.

4.1 ~~(d)~~ (e) For fiscal years 2014 and 2015, the commissioner of management and
 4.2 budget is authorized to provide cash flow assistance of up to \$20,000,000 from the
 4.3 special revenue fund or the statutory general fund under section 16A.671, subdivision 3,
 4.4 paragraph (a), to MNsure. Any funds provided under this paragraph shall be repaid,
 4.5 with interest, by June 30, 2015.

4.6 ~~(e)~~ (f) Funding for the operations of MNsure shall cover any compensation provided
 4.7 to navigators participating in the navigator program.

4.8 Sec. 5. Minnesota Statutes 2014, section 62V.05, subdivision 5, is amended to read:

4.9 Subd. 5. **Health carrier and health plan requirements; participation.** (a)
 4.10 Beginning January 1, 2015, the board may establish certification requirements for health
 4.11 carriers and health plans to be offered through MNsure that satisfy federal requirements
 4.12 under section 1311(c)(1) of the Affordable Care Act, Public Law 111-148.

4.13 (b) Paragraph (a) does not apply if by June 1, 2013, the legislature enacts regulatory
 4.14 requirements that:

4.15 (1) apply uniformly to all health carriers and health plans in the individual market;

4.16 (2) apply uniformly to all health carriers and health plans in the small group market;

4.17 and

4.18 (3) satisfy minimum federal certification requirements under section 1311(c)(1) of
 4.19 the Affordable Care Act, Public Law 111-148.

4.20 (c) In accordance with section 1311(e) of the Affordable Care Act, Public Law
 4.21 111-148, the board shall establish policies and procedures for certification ~~and selection~~
 4.22 of health plans to be offered as qualified health plans through MNsure. The board shall
 4.23 certify ~~and select~~ a health plan as a qualified health plan to be offered through MNsure, if:

4.24 ~~(1) the health plan meets the minimum certification requirements established in~~
 4.25 ~~paragraph (a) or the market regulatory requirements in paragraph (b);~~

4.26 ~~(2) the board determines that making the health plan available through MNsure is in~~
 4.27 ~~the interest of qualified individuals and qualified employers;~~

4.28 ~~(3) the health carrier applying to offer the health plan through MNsure also applies~~
 4.29 ~~to offer health plans at each actuarial value level and service area that the health carrier~~
 4.30 ~~currently offers in the individual and small group markets; and~~

4.31 ~~(4) the health carrier does not apply to offer health plans in the individual and~~
 4.32 ~~small group markets through MNsure under a separate license of a parent organization~~
 4.33 ~~or holding company under section 60D.15, that is different from what the health carrier~~
 4.34 ~~offers in the individual and small group markets outside MNsure.~~

5.1 ~~(d) In determining the interests of qualified individuals and employers under~~
 5.2 ~~paragraph (c), clause (2), the board may not exclude a health plan for any reason specified~~
 5.3 ~~under section 1311(c)(1)(B) of the Affordable Care Act, Public Law 111-148. The board~~
 5.4 ~~may consider:~~

- 5.5 ~~(1) affordability;~~
- 5.6 ~~(2) quality and value of health plans;~~
- 5.7 ~~(3) promotion of prevention and wellness;~~
- 5.8 ~~(4) promotion of initiatives to reduce health disparities;~~
- 5.9 ~~(5) market stability and adverse selection;~~
- 5.10 ~~(6) meaningful choices and access;~~
- 5.11 ~~(7) alignment and coordination with state agency and private sector purchasing~~
 5.12 ~~strategies and payment reform efforts; and~~
- 5.13 ~~(8) other criteria that the board determines appropriate.~~

5.14 ~~(e) For qualified health plans offered through MNsure on or after January 1, 2015,~~
 5.15 ~~the board shall establish policies and procedures under paragraphs (c) and (d) for selection~~
 5.16 ~~of health plans to be offered as qualified health plans through MNsure by February 1~~
 5.17 ~~of each year, beginning February 1, 2014. The board shall consistently and uniformly~~
 5.18 ~~apply all policies and procedures and any requirements, standards, or criteria to all health~~
 5.19 ~~carriers and health plans. For any policies, procedures, requirements, standards, or criteria~~
 5.20 ~~that are defined as rules under section 14.02, subdivision 4, the board may use the process~~
 5.21 ~~described in subdivision 9.~~

5.22 ~~(f) For 2014, the board shall not have the power to select health carriers and health~~
 5.23 ~~plans for participation in MNsure. The board shall permit all health plans that meet the~~
 5.24 ~~certification requirements under section 1311(c)(1) of the Affordable Care Act, Public~~
 5.25 ~~Law 111-148, to be offered through MNsure.~~

5.26 ~~(g) Under this subdivision, the board shall have the power to verify that health~~
 5.27 ~~carriers and health plans are properly certified to be eligible for participation in MNsure.~~

5.28 ~~(h) The board has the authority to decertify health carriers and health plans that~~
 5.29 ~~fail to maintain compliance with section 1311(c)(1) of the Affordable Care Act, Public~~
 5.30 ~~Law 111-148.~~

5.31 (1) the health plan provides the essential health benefits package described in section
 5.32 1302(a) of the Affordable Care Act, except that the plan is not required to provide essential
 5.33 benefits that duplicate the minimum benefits of dental plans if:

5.34 (i) MNsure has determined that at least one qualified dental plan is available to
 5.35 supplement the health plan's coverage; and

6.1 (ii) the health carrier makes a prominent disclosure at the time it offers the health
6.2 plan, in a form approved by MNsure, that the health plan does not provide the full range of
6.3 essential pediatric benefits and that the dental plans providing those benefits and other
6.4 dental benefits not covered by the health plan are offered through MNsure;

6.5 (2) the premium rates and policy forms have been approved by the commissioner of
6.6 commerce or the commissioner of health;

6.7 (3) the health plan provides at least a bronze level of coverage unless the health plan
6.8 is certified as a qualified catastrophic plan, meets the requirements of section 1302(e) of
6.9 the Affordable Care Act for catastrophic plans, and is only offered to individuals eligible
6.10 for catastrophic coverage;

6.11 (4) the health plan's cost-sharing requirements do not exceed the limits established
6.12 under section 1032(c)(1) of the Affordable Care Act and, if the health plan is offered to
6.13 a qualified employer, the health plan's deductible does not exceed the limits established
6.14 under section 1032(c)(2) of the Affordable Care Act;

6.15 (5) the health carrier offering the health plan:

6.16 (i) is licensed and in good standing;

6.17 (ii) offers at least one qualified health plan at the silver level and at least one qualified
6.18 health plan at the gold level through MNsure;

6.19 (iii) for each metal level in which the health carrier participates, offers coverage in
6.20 that level to individuals who, as of the beginning of a plan or policy year, have not attained
6.21 the age of 21;

6.22 (iv) charges the same premium rate for each qualified health plan without regard to
6.23 whether the plan is offered through MNsure and without regard to whether the health plan
6.24 is offered directly from the health carrier or through an insurance producer;

6.25 (v) does not charge any cancellation fees or penalties; and

6.26 (vi) complies with the regulations developed by the secretary of health and human
6.27 services under section 1311(d) of the Affordable Care Act; and

6.28 (6) the health plan meets the requirements of certification under section 1311(c) of
6.29 the Affordable Care Act.

6.30 (d) The provisions of this chapter that are applicable to qualified health plans must
6.31 allow for and apply to the extent relevant to dental plans except as modified in accordance
6.32 with clauses (1) to (3):

6.33 (1) the dental organization must be licensed to offer stand-alone dental plans but
6.34 need not be licensed to offer health plans;

6.35 (2) the dental plan must be limited to dental and oral health benefits, without
6.36 substantially duplicating the benefits typically offered by health plans without dental

7.1 coverage and must include, at a minimum, the essential pediatric dental benefits pursuant
7.2 to section 1302(b)(1)(J) of the Affordable Care Act; and

7.3 (3) a health carrier and a dental organization may jointly offer a comprehensive
7.4 health plan through MNsure in which the essential pediatric dental benefits are provided
7.5 by the dental organization and the other benefits are provided by the health carrier.

7.6 (e) All health carriers and health plans that have met the certification requirements
7.7 of this subdivision are eligible for participation in MNsure.

7.8 (f) For qualified health plans offered through MNsure beginning January 1,
7.9 2015, health carriers must use the most current addendum for Indian health care providers
7.10 approved by the Centers for Medicare and Medicaid Services and the tribes as part of their
7.11 contracts with Indian health care providers. MNsure shall comply with all future changes
7.12 in federal law with regard to health coverage for the tribes.

7.13 **Sec. 6. FINANCIAL AUDIT.**

7.14 (a) Notwithstanding Minnesota Statutes, section 62V.03, subdivision 2, paragraph
7.15 (a), MNsure shall contract with an independent audit firm to conduct an analysis on
7.16 the operations of MNsure from July 1, 2013, to June 30, 2015. The analysis shall
7.17 encompass an accounting of the operational costs of MNsure related to qualified health
7.18 plan enrollment that includes the administrative, IT systems, and customer services
7.19 expenditures, including all outreach grants awarded. The analysis shall also include an
7.20 accounting of all federal funds related to qualified health plans expended or obligated and
7.21 the total amount of premiums withheld. A cost-benefit analysis shall be conducted on the
7.22 expenditures made based on the number of individuals and families who have enrolled in
7.23 a qualified health plan through MNsure.

7.24 (b) The results of the audit and analysis shall be submitted to the legislative oversight
7.25 committee established under Minnesota Statutes, section 62V.11, and the chairs and
7.26 ranking minority members of the legislative committees with jurisdiction over MNsure by
7.27 January 15, 2016.

7.28 (c) The costs and expenses of the audit and analysis shall be paid by MNsure.