LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 1, 2009

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2750** by Eiland (Relating to the regulation of certain market conduct activities of certain life, accident, and health insurers and health benefit plan issuers; providing civil liability and administrative and criminal penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2750, As Introduced: a negative impact of ($8,212,842) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	($3,967,390)
2011	($4,245,452)
2012	($4,546,153)
2013	($4,906,994)
2014	($5,267,836)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from *Insurance Maint Tax Fees* 8042	Probable (Cost) from *Insurance Maint Tax Fees* 8042	Probable (Cost) from *General Revenue Fund* 1	Probable (Cost) from *GR Dedicated Accounts* 994
2010	$472,733	($472,733)	($3,967,390)	($154,444)
2011	$313,324	($313,324)	($4,245,452)	($164,408)
2012	$313,324	($313,324)	($4,546,153)	($176,863)
2013	$313,324	($313,324)	($4,906,994)	($191,809)
2014	$313,324	($313,324)	($5,267,836)	($206,755)

Fiscal Year	Probable (Cost) from *Other Special State Funds* 998	Probable (Cost) from *State Highway Fund* 6	Probable (Cost) from *Federal Funds* 555	Change in Number of State Employees from FY 2009
2010	($16,329)	($849,197)	($883,814)	7.0
2011	($17,383)	($903,984)	($887,608)	5.5
2012	($18,700)	($972,467)	($954,852)	5.5
2013	($20,280)	($1,054,648)	($1,035,543)	5.5
2014	($21,860)	($1,136,828)	($1,116,235)	5.5

Fiscal Analysis

The bill would amend the Insurance Code to expand the regulation of certain market conduct activities of certain life, accident, and health insurers and health benefit plan issuers.

ARTICLE 1 of the bill would create an independent review process for certain cancellation decisions. The bill would require the Texas Department of Insurance (TDI) to adopt standards for the independent review organizations and to adopt rules to implement these provisions.

ARTICLE 2 would require insurance companies to file annually or more often as required by the commissioner, their loss ratio data to TDI and publish the information on TDI's website. The bill would prohibit a preferred provider benefit plan from having or maintaining a medical loss ratio of less than 72 percent, and requires premium rate adjustment with actuarial justification and remission to the Texas Health Insurance Risk Pool of amounts based upon the difference in actual and allowed medical loss ratios in those instances wherein an insurer violates loss ratio requirements. The bill would grant TDI greater authority over health benefit plan ratemaking. The bill would require TDI to adopt rules to implement these provisions.

ARTICLE 3 of the bill would create a complaint process for premium rate increases for small employer health benefit plans. The bill would require the Office of Public Insurance Counsel (OPIC) to accept complaints against small employer health benefit plans from small employers, eligible employees or their dependents concerning significant rate increases. The bill would authorize OPIC to appear before TDI regarding the complaint and authorize TDI to issue an order assessing penalties if the rate is determined to be excessive. The bill would allow OPIC to request reimbursement from TDI for costs and fees associated with the investigation and resolution of complaint of a rate increase. The bill would not require, but would allow, TDI to reimburse OPIC for these expenses.

The bill would create the Honesty-In-Premium Account as fund in the General Revenue Fund. The bill would allow TDI to make an assessment against each small employer health benefit plan issuer to cover the costs of investigating and resolving a complaint. The bill would allow the fund to receive revenue from any assessments TDI makes as specified in the bill and from interest earned on the fund.

ARTICLE 4 of the bill would require certain health benefit plans while processing claims to use standard codes to identify medical procedures. The bill would prohibit the use multiple procedure logic on certain standard codes.

ARTICLE 5 would provide a number of protections for physicians if a health benefit plan were to rank physicians. The bill would require a health benefit plan that intends to rank physicians to disclose the standards or criteria to the physician before disseminating the ranking to the public. The bill would establish due process rights for the physician to dispute the ranking, including a required notice of intent from the health benefit plan and the right to a hearing for a physician. The bill would explicitly set the burden of proof on the health benefit plan. The bill would permit a district court to issue a writ of injunction if a health benefit plan were to fail to meet those requirements.

ARTICLE 6 would expand TDI regulatory authority to include the secondary market in certain physician and health care provider discounts. The bill would require contracting agents to register with TDI and would prohibit certain transfers of a physician's or health care provider's contracted discounted fee. The bill would require TDI to adopt rules to implement this section.

The bill would take effect immediately if it receives a vote of two-thirds of all the members elected to each house. If this Act does not receive the vote necessary for immediate effect, then the bill would take effect September 1, 2009.

Methodology

Based on the analysis of TDI, it is assumed that there would be an revenue gain of $1,925 in the General Revenue Dedicated Account Fund 36 each fiscal year of 2010-2014 because the bill would result in additional rate filings caused by carriers needing to amend their rates due to not meeting the minimum loss ratio requirements from ARTICLE 2. Since General Revenue-Dedicated Account Fund 36 is a self-leveling account, this analysis assumes all revenue generated would go toward fund balances or the maintenance tax would be set to recover a lower level of revenue the following year.

Based on the analysis by TDI, it is anticipated that the loss ratio collection and review process and the complaint process will require an additional 4 FTEs in fiscal year 2010 and 2.5 FTEs in fiscal year 2011 and each subsequent fiscal year. The additional FTEs in 2010 are necessary for the development of a new computer application for the annual collection of loss ratio data.

In fiscal year 2010, the 4 FTEs would cost $266,254 for salaries and wages with associated benefit costs of $76,069, travel costs of $1,250, and telephone and other operating expenses of $10,553. Additionally, one-time equipment expenditures are anticipated to be $18,607 in fiscal year 2010. In fiscal year 2011, the 2.5 FTEs would cost $158,131 for salaries and wages with associated benefit costs of $45,178, travel costs of $1,250, and telephone and other operating expenses of $8,765. Additionally, expert witnesses will be required in contested rate cases at a cost of $100,000 each year of 2010-2014. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Since reimbursements from ARTICLE 3 are at the discretion of TDI, this analysis assumes that TDI would not make assessments on the small employer health benefit plan issuer and therefore would not reimburse OPIC for costs related to the complaint process.

Based on analysis provided by OPIC, it is anticipated that the complaint process will require an additional 3 FTEs, at a salary cost of $156,486 with associated benefits of $44,708 each fiscal year. Additionally, a one-time equipment cost of $7,500 is anticipated in fiscal year 2010. In each fiscal year, a cost of $75,000 is expected for expert witnesses to testify in the additional hearings at TDI.

Based on the analysis of the Teacher Retirement System (TRS), it is assumed the bill would increase medical claims in the TRS-ActiveCare plan by an estimated $7,840,000 in fiscal year 2010 and $8,620,000 in fiscal year 2011. Because the TRS-ActiveCare plan is self-funded, the claims increase would have no net fiscal impact on the state, but could result in increases in plan premiums of an estimated $40 per year per employee.

Based on the analysis by the Employee Retirement System (ERS), it is assumed the bill would increase medical claims by an estimated $7,500,000 in fiscal year 2010 and $8,100,000 in fiscal year 2011. The cost to state funds would be $5,582,480 in fiscal year 2010 and $5,942,641 in fiscal year 2011

It is not anticipated that the requirements of ARTICLE 5 of the bill would have any fiscal impact to the state.

Based on analysis provided by the University of Texas System Administration and the Texas A&M University System Administration, this bill would have no fiscal impact on the agencies.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993, and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

The bill is anticipated to have a technology impact of $13,276 in fiscal year 2010.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 359 Office of Public Insurance Counsel, 454 Department of Insurance, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: JOB, CH, KJG, MW, HC, JW