



# Michigan Association of Health Plans

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November 25, 2008

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Rep. Marc Corriveau  
House Office Building, 699  
124 N. Capitol  
Lansing, MI 48933

Re: MAHP Position on H-3 (Draft 5) of HB 5282 and 5283

Dear Representative Corriveau:

MAHP continues to believe that the current individual market reform proposals, HB 5282 and 5283 (H-3 Draft 5, referred to here as "Corriveau draft"), are complex and not appropriate to take up during the lame duck session. Rather, the legislature should take up the individual market issues during the next legislative session.

Although we commend your efforts to amend and improve upon prior drafts of the individual market reform bills, it would be prudent to hold public hearings on the current drafts so all the details can be fully examined and open to those most affected. The issue of individual market reform is very complex. You and your colleagues have made some progress in moving the legislation forward. But it is clear more work needs to be done to assure Michigan's citizens that the legislation is good policy and avoids unexpected adverse consequences.

MAHP has conducted an initial review of your draft bills. We have identified several critical issues that cause concern. Some adversely affect consumers, others are anti-competitive, and some are simply inequitable among carriers in the individual market. We have identified the following critical issues\*:

*1. Tax on carriers that reject applicants based on initial medical condition*

An assessment levied on health insurer declinations is a "tax." It is clearly a funding mechanism for a high-risk pool although the words "high-risk pool" are not used. The lion's share of the tax would go to BCBSM to offset their losses in their community rated products (which are the products that will transform into the high-risk pool once BCBSM begins writing a medically underwritten product). Their new medically underwritten product will "cherry pick" its own community rated pool and cause its experience to become progressively worse and very expensive to afford.

\*This list of issues is not exhaustive and as MAHP continues its analysis of the Corriveau draft, it reserves the right to raise further issues and comments as warranted.

In addition to objecting to the concept of a declination tax, MAHP is concerned with the method of distribution of the tax proceeds. The draft has no detail or direction to OFIR as to how the money would be distributed. There is no guarantee the money would be distributed equitably among carriers that qualify for subsidy.

2. *Remove Med-Supp (aka Medi-gap) coverage from the discussion of individual coverage.*

The rationale for excluding Med-Supp is that Med-Supp covers people who already have standard individual coverage through Medicare and, by its name, is supplemental. These types of supplemental coverages should not be categorized as traditional individual market products and they should not be folded into the individual market legislation.

Moreover, Med-Supp is a coverage that is not associated with BCBSM's status as "insurer of last resort." BCBSM is able to charge a surcharge to its group and individual subscribers to help offset the costs associated with offering Med-Supp policies. This surcharge/subsidy, which is not collected from all who are able to pay, is the PA 350 "give" to BCBSM for any perceived burden it has in selling this coverage. It is overreaching to expect other carriers to "bail out" BCBSM for their losses in this line of business. BCBSM has consistently charged premiums that are below experience costs (perhaps to boost market share) and thereby has artificially inflated its losses in its Med-Supp business.

The Corriveau draft legislation may be devastating for older Michigan citizens. For example, if BCBSM gains its desired minimum loss ratio for Med-Supp business at 90%, it will then pave the way for BCBSM to enjoy an unchallengeable rate increase of approximately 75%. This increase could not be paid by many older citizens.

3. *The draft fails to allow consumer benefit choices through a wider array of managed health care benefit packages for individual policies.*

In order for managed health plans to compete on a level playing field (in terms of benefit design) they must be allowed to offer customers a variety of benefit designs that are comparable to what other carriers offer in the market. Managed health plans currently must offer policies that are very comprehensive, while other types of carriers are able to tailor benefit packages to meet the needs and budgets of customers. Greater benefit choice for consumers leads to greater competition in the individual market and keeps premium costs lower. Unless consumers are allowed to choose managed care plans that can provide tailored benefit packages, managed care plans cannot compete in the business of individual coverage.

It is vital for any proposed individual market legislation to promote fair and open competition. Managed health plans serve an important role in Michigan's health care market because they assist members with a wide variety of health management techniques, such as healthy lifestyles and disease prevention. It would be a disservice to millions of Michigan citizens if the proposed legislation failed to promote greater market competition and if it failed to give citizens an opportunity to lower their premiums by tailoring benefit packages to meet their needs. It is imperative for the Corriveau draft, in order to truly promote competition and lower premiums, to permit full consumer tailored benefit designs in managed health benefit plans.

4. *BCBSM's responsibility as a benevolent, charitable trust*

The Attorney General and Commissioner of OFIR should not lose their abilities to consider (like an administrative law judge did in a recent rate challenge case) the totality of BCBSM business, profitability and amounts of surplus in determining adequate rates for BCBSM individual business. Under Michigan law, BCBSM is a benevolent, charitable trust and its entire operation should be scrutinized by regulators to assure it is upholding its social mission. It makes sense to allow regulators to consider the overall profitability of BCBSM operations when analyzing whether BCBSM is adequately supporting lower individual market rates.

Indeed, BCBSM's social mission is to provide affordable coverage for all residents. The draft will allow BCBSM to abdicate its responsibility by creating a firewall against the Attorney General's oversight of BCBSM individual rates in relation to its overall operations. The draft forecloses such consideration and clearly insulates a charitable entity from full scrutiny and review of the Attorney General and Commissioner of OFIR.

The Corriveau draft also raises concerns because of provisions relating to BCBSM's social mission spending. BCBSM will be allowed too much latitude in categorizing certain factors as social mission spending. For example, the draft allows BCBSM to count as social mission spending the money it receives from the carrier tax. It is absurd to allow BCBSM to claim this amount as social mission spending because it is money it will receive from other carriers to offset losses in their self-created high-risk pool. It is NOT a factor of benevolence or contribution to the citizens of the state of Michigan in exchange for its tax advantage.

Another example of a perverse use of the term "social mission spending" is BCBSM's inclusion of its funding of a joint venture with the University of Michigan. The spending for the venture was part of the BCBSM acquisition of M-Care. The duty to fund the venture was built into the purchase price and certainly not part of an overall charitable and benevolent mission. Whatever gain the citizens of Michigan received from BCBSM's purchase of M-Care was fully realized when the transaction was closed.

##### 5. *BCBSM's ability to medically underwrite products*

Under the Corriveau draft legislation, BCBSM will be able to medically underwrite - they will be able to establish premiums (or reject individuals) on the basis of their health status. This concept is antithetical to the notion of "insurer of last resort" and favorable state tax position enjoyed by BCBSM. The BCBSM underwritten products will effectively "cherry pick" from its own community rated products (that are in essence closed blocks of business) and this will lead to creation of a de facto high-risk pool.

There is no other state in the United States that allows for a tax-free entity, such as BCBSM, to keep its favorable tax status as insurer of last resort while also allowing the existence of a high-risk pool and medically underwritten products. This would allow it to essentially become an indemnity carrier without having to pay taxes.

The citizens of the state of Michigan should be wary of permitting BCBSM to medically underwrite products. Under PA 350, BCBSM is prohibited from medically underwriting subscribers because it is specifically given tax-free status in exchange for its duty to rate subscribers under a community rating model. Traditionally, medical underwriting is a valid and legal practice granted to indemnity insurance carriers. Many such companies are organized as for-profit enterprises that issue stock. Like any other publically traded company, a for-profit health insurance company is beholden to its shareholders, it must be efficient, and to be successful it must produce a reasonable return on shareholder investment. In exchange for its ability to use medical underwriting, the state of Michigan requires the traditional for-profit indemnity companies to pay taxes. If, however, BCBSM is allowed (as stated in the Corriveau draft) to medically underwrite policies, then it will in

essence convert to a for-profit enterprise, yet it will not have the duty of paying taxes to the people of the state of Michigan. This process has been called a “creeping conversion.” If BCBSM wishes to convert from its current non-profit, tax-free status to a for-profit enterprise, then any such conversion should be the subject of stand-alone legislation and should not be associated with the current debate over individual market reform.

In any event, whether attempting to cleverly convert to a for-profit type entity, or whether to truly affect positive change in the individual market, it is imperative that the Corriveau draft and associated amendments be examined by way of public hearings and full disclosure.

#### *6. Attorney General Oversight*

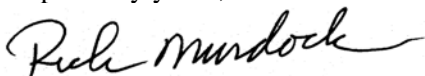
It is critical for the Attorney General to have the full oversight powers currently provided for in Michigan law. MAHP supports the S-4 version relating to (among other things) the Attorney General’s oversight. Likewise, we support including these S-4 provisions into the Corriveau draft.

The S-4 version of the legislation strikes a reasonable balance between adequate Attorney General oversight and BCBSM “speed to market” for individual products and rate increases. The Corriveau draft limits Attorney General oversight by narrowing BCBSM rate filing challenges to only actuarial analysis: that is, to double check the math used to develop the BCBSM proposed rates. This limitation of Attorney General oversight is not necessary and amounts to deregulation of an entity that clearly needs the amount of oversight contemplated by the S-4 version of HB 5282 and 5283.

As usual, MAHP stands ready to assist in developing sound and prudent health care policy for the people of the state of Michigan. We steadfastly believe that establishing policy changes, such as those stated in the Corriveau draft, warrant a full vetting and extensive public hearings. The amendments noted in the draft are significantly different than those contained in the S-4 and S-5 versions of the legislation. As you know, those versions were the product of numerous hearings. We strongly believe the Corriveau draft should be publically discussed and examined with the same degree of public scrutiny.

To accomplish the goal of making prudent public policy, we urge you to hold the bills over for the next legislative session and to open up public debate then. Further, we believe that any reform of the individual market must also address affordable options for Michigan’s uninsured. We look forward to working with you to create a comprehensive reform package that would improve the individual market, would make individual coverage more affordable and would get more Michigan citizens insured.

Respectfully yours,



Richard Murdock  
Executive Director  
Michigan Association of Health Plans

Cc: Members of the House/Senate Conference Committee