



2023 South Dakota Legislature

House Bill 1012

Introduced by: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation

1 **An Act to repeal the annual grievance reporting requirements for health carriers.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 58-17I-5 be REPEALED:**

4 Each health carrier shall submit to the director, at least annually, a report in the
5 format specified by the director. The report shall include for each type of health benefit
6 plan offered by the health carrier:

7 (1) ~~— The certificate of compliance required by § 58-17I-6;~~

8 (2) ~~— The number of covered lives;~~

9 (3) ~~— The total number of grievances;~~

10 (4) ~~— The number of grievances resolved at each level, if applicable, and their resolution;~~

11 (5) ~~— The number of grievances appealed to the director of which the health carrier has
12 been informed;~~

13 (6) ~~— The number of grievances referred to alternative dispute resolution procedures or
14 resulting in litigation; and~~

15 (7) ~~— A synopsis of actions being taken to correct problems identified. (SL 2012, ch 239,
16 § 1 provides: "The provisions of chapter 219 of the 2011 Session Laws shall be
17 deemed repealed if the Patient Protection and Affordable Care Act, Pub. L. No. 111-
18 148, 124 Stat. 119 (2010), as amended by the Health Care and Education
19 Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) is found to
20 be unconstitutional in its entirety by a final decision of a federal court of competent
21 jurisdiction and all appeals exhausted or time for appeals elapsed.")~~

22 **Section 2. That § 58-17I-6 be AMENDED:**

23 **58-17I-6.** Except as specified in this chapter, each health carrier shall use written
24 procedures for receiving and resolving grievances from covered persons, as provided in
25 §§ 58-17I-7 to 58-17I-11, inclusive. If a health carrier fails to strictly adhere to the

1 requirements of §§ 58-17I-7 to 58-17I-10, inclusive, or §§ 58-17I-12 to 58-17I-15,
2 inclusive, with respect to receiving and resolving grievances involving an adverse
3 determination, the covered person shall be deemed to have exhausted the provisions of
4 this chapter, and may take action regardless of whether the health carrier asserts that the
5 carrier substantially complied with the requirements of §§ 58-17I-7 to 58-17I-10,
6 inclusive, or §§ 58-17I-12 to 58-17I-15, inclusive, or that any error the carrier committed
7 was de minimus.

8 A covered person may file a request for external review in accordance with rules
9 promulgated by the director. In addition a covered person is entitled to pursue any
10 available remedies under state or federal law on the basis that the health carrier failed to
11 provide a reasonable internal claims and appeals process that would yield a decision on
12 the merits of the claim.

13 A health carrier shall file with the director a copy of the procedures required under
14 this section, including all forms used to process requests made pursuant to §§ 58-17I-7
15 to 58-17I-11, inclusive. Any subsequent material modifications to the documents also
16 shall be filed. The director may disapprove a filing received in accordance with this section
17 that fails to comply with this chapter, or applicable rules. ~~In addition, a health carrier shall~~
18 ~~file annually with the director, as part of its annual report required by §§ 58-17I-4 and~~
19 ~~58-17I-5, a certificate of compliance stating that the health carrier has established and~~
20 ~~maintains, for each of its health benefit plans, grievance procedures that fully comply with~~
21 ~~the provisions of this chapter.~~ A description of the grievance procedures required under
22 this section shall be set forth in or attached to the policy, certificate, membership booklet,
23 outline of coverage, or other evidence of coverage provided to covered persons. The
24 grievance procedure documents shall include a statement of a covered person's right to
25 contact the Division of Insurance for assistance at any time. The statement shall include
26 the telephone number and address of the Division of Insurance. (SL 2012, ch 239, § 1
27 provides: "The provisions of chapter 219 of the 2011 Session Laws shall be deemed
28 repealed if the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat.
29 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010,
30 Pub. L. No. 111-152, 124 Stat. 1029 (2010) is found to be unconstitutional in its entirety
31 by a final decision of a federal court of competent jurisdiction and all appeals exhausted
32 or time for appeals elapsed.")