

## 2023 South Dakota Legislature

**Senate Bill 62****AMENDMENT 62A FOR THE INTRODUCED BILL**

1 **An Act to amend provisions regarding delivery of electronic insurance documents.**

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

3 **Section 1. That § 58-1-27 be AMENDED:**

4 **58-1-27.** Terms used in §§ 58-1-27 to 58-1-39, inclusive, mean:

5 (1) ~~"Delivered by electronic means,":~~

6 (a) ~~— Delivery to an electronic mail address at which a party has consented to~~  
7 ~~receive notices or documents; or~~

8 (b) ~~— Posting on an electronic network or site accessible via the internet, mobile~~  
9 ~~application, computer, mobile device, tablet, or any other electronic device,~~  
10 ~~together with separate notice to a party directed to the electronic mail~~  
11 ~~address at which the party consents to receive notice of the posting;~~

12 (2) ~~— "Party," any recipient of any notice or document required as part of an insurance~~  
13 ~~transaction, including an applicant, an insured, a policyholder, or an annuity~~  
14 ~~contract holder.~~

15 "Covered employee," an individual participating in a group health plan who is  
16 entitled to notices and documents and who is an employee of the sponsor or  
17 policyholder of the group health plan;

18 (2) "Covered person," an individual participating in a group health plan who is entitled  
19 to notices and documents;

20 (3) "Delivered by electronic means:"

21 (a) Delivery to an electronic mail address at which a party has consented to  
22 receive notices or documents; or

23 (b) Posting on an electronic network or site accessible via the internet, mobile  
24 application, computer, mobile device, tablet, or any other electronic device,  
25 together with separate notice to a party directed to the electronic mail  
26 address at which the party consents to receive notice of the posting;

1       (4) "Party," any recipient of any notice or document required as part of an insurance  
2       transaction, including an applicant, a covered employee, a covered person, an  
3       insured, a policyholder, or an annuity contract holder; and

4       (5) "Smart device," an electronic device that combines a cell phone with a hand-held  
5       computer and that offers internet access and text or electronic mail capabilities.

6       **Section 2. That chapter 58-1 be amended with a NEW SECTION:**

7               Notwithstanding § 58-1-30, a sponsor or policyholder of a group health plan may  
8       consent to notices and documents delivered by electronic means, unless there is a federal  
9       requirement for a specific mode of delivery, on behalf of the sponsor or policyholder's  
10       covered employees and covered persons.

11       **Section 3. That chapter 58-1 be amended with a NEW SECTION:**

12               For consent to be effective under section 2 of this Act, the sponsor or policyholder  
13       must:

14       (1) Assign each covered employee for whom consent is being given an electronic mail  
15       address for employment-related purposes at which the employee may receive or  
16       access notifications regarding posted notices and documents delivered by  
17       electronic means or require each employee for whom consent is being given to  
18       provide the sponsor or policyholder with an electronic mail address or a smart  
19       device number at which the employee may receive or access notifications regarding  
20       posted notices and documents delivered by electronic means;

21       (2) Require each covered person, or a covered employee on behalf of a covered  
22       person, to provide the sponsor or policyholder with an electronic mail address or a  
23       smart device number at which the person may receive or access notifications  
24       regarding notices and documents delivered by electronic means;

25       (3) Provide a notification in paper form, containing the elements described in section  
26       4 of this Act, to each covered employee and covered person for whom consent is  
27       being given prior to delivery by electronic means of notices and documents; and

28       (4) Provide notice, in the manner described in section 5 of this Act, to each impacted  
29       covered employee and covered person, at the electronic mail address or smart  
30       device number designated pursuant to subdivision (2), prior to each time a notice  
31       or document is posted on an internet site.

32       **Section 4. That chapter 58-1 be amended with a NEW SECTION:**

- 1           The paper form notification, as described in section 3 of this Act, must:
- 2       (1) Notify the covered employee or covered person that notices and documents for the
- 3           group health plan will be posted to an internet site to which the covered employee
- 4           or covered person will have reasonable access;
- 5       (2) Confirm the electronic mail address or smart device number to which notifications
- 6           regarding notice and documents will be delivered by electronic means to the
- 7           covered employee or person;
- 8       (3) Provide instructions for accessing notices or documents on the internet site;
- 9       (4) Provide the time period during which a specific type of notice or document delivered
- 10           by electronic means will remain accessible;
- 11       (5) Advise the covered employee or covered person that a paper form of a notice or
- 12           document may be requested free of charge and of the process to request a paper
- 13           form;
- 14       (6) Advise the covered employee or covered person of the right to opt out of delivery
- 15           by electronic means and the process to exercise that right free of charge; and
- 16       (7) Notify the covered employee or covered person of the hardware or software
- 17           requirements needed to access or retain a notice or document from an internet
- 18           site.

19       **Section 5. That chapter 58-1 be amended with a NEW SECTION:**

20           The notice, as described in section 3 of this Act, may be delivered by electronic

21           means to the covered employee's or covered person's designated electronic mail address

22           or smart device number and must contain:

- 23       (1) A prominent statement that important information regarding the group health plan
- 24           has been posted on the internet site;
- 25       (2) The name of or a description of the notice or document;
- 26       (3) The internet site address or a hyperlink at which the notice or document may be
- 27           accessed;
- 28       (4) A statement of the recipient's right to request the notice or document in paper
- 29           form at no charge and the process to exercise that right;
- 30       (5) A statement of the recipient's right to opt out of delivery by electronic means and
- 31           to receive documents in paper form free of charge;
- 32       (6) The time period during which the notice or document will remain accessible on the
- 33           internet site; and
- 34       (7) A telephone number for the insurer or the group health plan administrator.