

Committee: House Commerce and Energy

Wednesday, February 08, 2023 10:00 AM

Roll Call

Present: Rep. Arlint, Rep. Bahmuller, Rep. Callies, Rep. Donnell, Rep. Duffy,  
Rep. Krohmer, Rep. Mulally, Rep. Nelson, Rep. Pinnow, Rep. Schneider,  
Rep. Shorma, and Rep. Weisgram  
Excused: Rep. Perry

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Representative Weisgram**

**MOTION: TO APPROVE THE MINUTES OF MONDAY, FEBRUARY 06<sup>TH</sup>**

Moved by: Krohmer  
Second by: Pinnow  
Action: Prevailed by roll call vote (11-1-1-0)

Voting Yes: Arlint, Bahmuller, Callies, Donnell, Duffy, Krohmer, Nelson, Pinnow,  
Schneider, Shorma, and Weisgram

Voting No: Mulally

Excused: Perry

**MOTION: Motion to pass the gavel to Rep Schneider**

Moved by: Callies  
Second by: Shorma  
Action: Prevailed by voice vote

**HB 1135 : provide for transparency in the pricing of prescription drugs.**

Presented by: Representative Mike Weisgram

Proponents: Craig Matson, South Dakota Pharmacists Association, Pierre (Handout(s) 1)  
Eric Grocott, South Dakota Pharmacist's Association, Pierre  
Hugh Patrick Mack, South Dakota Pharmacists Association, Pierre  
Lindsey Osterkamp, South Dakota Pharmacists Association, Pierre  
Lindsey Osterkamp, self, Sioux Falls  
Melissa Klemann, Wellmark of South Dakota, Inc., Des Moines, IA  
Samuel J. Nelson, Hy-Vee, Inc., West Des Moines, IA  
Deb Fischer-Clemens, Avera Health, Sioux Falls

Opponents: Richard Tieszen, Pharmaceutical Care Management Association, Washington,  
DC (Handout(s) 2,3)  
Ellie J. Bailey, America's Health Insurance Plans, Washington, DC (Handout(s)  
4)

**MOTION: AMEND HB 1135**

1135B

- On page 1, line 15, of the Introduced bill, delete "the proprietary or registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed on the drug or on its container, label, or wrapping, at the time of packaging" and insert " the same as set forth in § 36-11-2"
- On page 2, line 5, of the Introduced bill, delete "a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, provided the term includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition, and further provided that the term does not include:
- (a) Coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers' compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, specified in federal regulations issued pursuant to Public Law 104-191, as of January 1, 2011, under which benefits for medical care are secondary or incidental to other insurance benefits;
  - (b) The following benefits, if the benefits are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan: limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or other similar, limited benefits specified in federal regulations issued pursuant to Public Law 104-191, as of January 1, 2011;
  - (c) The following benefits, if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor: coverage only for a specified disease or illness; or hospital indemnity or other fixed indemnity insurance; or
  - (d) The following, if offered as a separate policy, certificate, or contract of insurance: Medicare supplemental health insurance, as defined under 42 U. S. C. § 1395ss, as of January 1, 2011; coverage supplemental to the coverage provided under 10 U. S. C. ch. 55, as of January 1, 2011; or similar supplemental coverage provided to coverage under a group health plan" and insert " the same as set forth in § 58-17F-2"
- On page 3, line 4, of the Introduced bill, delete " an entity that is subject to the insurance laws and rules of this state, or subject to the jurisdiction of the director of the Division of Insurance, and which contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services" and insert " the same as set forth in § 58-17F-1"
- On page 3, line 11, of the Introduced bill, delete "a biological product that the U. S. Food and Drug Administration has:
- (a) Licensed, and has determined meets the standards for interchangeability, pursuant to 42 U. S. C. § 262(k)(4), as of January 1, 2018; or
  - (b) Determined is therapeutically equivalent, as set forth in the latest edition of, or any supplement to, the Food and Drug Administration's publication entitled Approved Drug Products with Therapeutic Equivalence Evaluations, as adopted by the State Board of Pharmacy, in rules promulgated pursuant to chapter 1-26" and insert " the same as set forth in § 36-11-2"
- On page 4, line 5, of the Introduced bill, delete " an individual licensed by the State Board of Pharmacy, in accordance with chapter 36-11, to engage in the practice of pharmacy" and insert " the same as set forth in § 36-11-2"
- On page 4, line 7, of the Introduced bill, delete "a place that:
- (a) Is licensed by the State Board of Pharmacy, in accordance with chapter 36-11;
  - (b) Is located within or outside of this state; and

- (c) Provides for the dispensing of drugs and rendering of pharmaceutical care to residents of this state" and insert " the same as set forth in § 36-11-2"
- On page 5, line 2, of the Introduced bill, delete "covered entity" and insert "third party payor"
- On page 5, line 12, of the Introduced bill, after "manager;
- (16)" delete ""Pharmacy benefit manager duty," a duty imposed upon a pharmacy benefit manager to provide to the Division of Insurance, during any action under section 18 of this Act:
- (a) The amount charged or claimed by the pharmacy benefit manager in a format that allows the division to identify all instances of spread pricing; and
- (b) Information regarding shared ownership interest, by any person defined in this section;"
- On page 5, line 19, of the Introduced bill, after "section;" delete "(17)"
- On page 5, line 20, of the Introduced bill, after "to " delete "individuals "
- On page 5, line 20, of the Introduced bill, after "covered " insert "individuals "
- On page 5, line 23, of the Introduced bill, delete "(18)" and insert "(17)"
- On page 5, line 27, of the Introduced bill, delete "(19)" and insert "(18)"
- On page 5, line 29, of the Introduced bill, delete "(20)" and insert "(19)"
- On page 5, line 29, of the Introduced bill, delete "a practitioner's written or oral order, for a drug or a drug device, for a specific patient" and insert " the same as set forth in § 36-11-2"
- On page 5, line 31, of the Introduced bill, delete "(21)" and insert "(20)"
- On page 5, line 34, of the Introduced bill, delete "(22)" and insert "(21)"
- On page 6, line 10, of the Introduced bill, delete "(23)" and insert "(22)"
- On page 6, line 15, of the Introduced bill, delete "(24)" and insert "(23)"
- On page 6, line 19, of the Introduced bill, delete "(25)" and insert "(24)"
- On page 6, line 19, of the Introduced bill, delete " information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy" and insert " the same as set forth in § 37-29-1"
- On page 6, line 27, of the Introduced bill, delete "(26)" and insert "(25)"
- On page 6, line 31, of the Introduced bill, delete "(27)" and insert "(26)"
- On page 6, line 31, of the Introduced bill, delete " any person engaged in wholesale distribution, but not including:
- (a) A manufacturer;
- (b) A manufacturer's co-licensed partner;
- (c) A repackager; or
- (d) A third-party logistics provider" and insert " the same as set forth in § 36-11A-25"
- On page 7, line 4, of the Introduced bill, remove the overstrikes from " to operate as a third party administrator pursuant to chapter 58-29D. Sections 58-29D-26"
- On page 7, line 5, of the Introduced bill, after "58-29D-26" insert ", 58-29D-27,"
- On page 7, line 5, of the Introduced bill, remove the overstrikes from " and 58-29D-29 do not apply to pharmacy benefits managers"
- On page 8, line 26, of the Introduced bill, after "director" delete " of the Division of Insurance"
- On page 10, line 22, of the Introduced bill, delete "A " and insert "Except as provided in chapter 58-17K, and in accordance with the audit provisions in § 58-29E-7, a "
- On page 10, line 30, of the Introduced bill, delete "this section " and insert "§ 58-29E-7 "
- On page 11, line 2, of the Introduced bill, delete " this section" and insert " § 58-29E-7 "
- On page 11, line 25, of the Introduced bill, delete "an " and insert "a covered "
- On page 11, line 31, of the Introduced bill, delete "an " and insert "a covered "
- On page 11, line 31, of the Introduced bill, after "the " insert "covered "
- On page 11, line 32, of the Introduced bill, after "the" insert " covered"
- On page 12, line 1, of the Introduced bill, after "the " insert "covered "
- On page 12, line 2, of the Introduced bill, after "the " insert "covered "
- On page 14, line 8, of the Introduced bill, after "SECTION:" delete "The director of the Division of Insurance may deny an application for licensure as a pharmacy benefit manager, may deny an application for the renewal of a pharmacy benefit manager license, and may suspend or revoke the license of a pharmacy benefit manager, if the director determines that the pharmacy benefit manager:
- (1) Is in an unsound financial condition;

- (2) Is using methods or practices that are potentially hazardous or injurious to covered individuals, third-party payors, or providers;
  - (3) Has failed to pay, within sixty days, any final judgment entered against it;
  - (4) Has violated any statute or rule, or an order of the director;
  - (5) Has refused:
    - (a) To be examined;
    - (b) To produce its accounts, records, and files for examination; or
    - (c) To provide information regarding its business or any duties set forth in this chapter;
  - (6) Has, without just cause:
    - (a) Refused to pay proper claims or perform services arising under its contracts;
    - (b) Required providers to accept less than the amount due them; or
    - (c) Required covered individuals to threaten or initiate legal action in order to secure their full payment or the settlement of their claims;"
- On page 14, line 28, of the Introduced bill, delete "(7) Is affiliated with or under the same general management or interlocking directorate or ownership as another pharmacy benefit manager that transacts business in this state without a license;
- (8) Fails to meet or continue meeting any qualification required for the issuance of an initial license;
  - (9) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony, without regard to whether adjudication was withheld;
  - (10) Has a license that is under suspension or revocation in another state; or
  - (11) Has provided false or misleading information to the director" and insert "

A pharmacy benefit manager licensed under this chapter shall, at the request of the Division of Insurance, provide:

- (1) The amount charged or claimed by the pharmacy benefit manager, in a format that allows the division to identify all instances of spread pricing; and
- (2) Information regarding a shared ownership interest by any person defined in § 58-29E-1"

On page 15, after line 2, of the Introduced bill, insert: "

**Section 19. That chapter 58-29E be amended with a NEW SECTION:**

In addition to any grounds set forth in § 58-29D-31, the director may deny a pharmacy benefit manager's application for an initial or a renewed license, and may suspend or revoke a pharmacy benefit manager's license, if the director determines that the pharmacy benefit manager, or an applicant for a license, failed to provide information as required by this chapter. "

Moved by: Pinnow  
 Second by: Bahmuller  
 Action: Prevailed by voice vote

**MOTION: DO PASS HB 1135 AS AMENDED**

Moved by: Mulally  
 Second by: Arlint  
 Action: Prevailed by Majority Members Elect (12-0-1-0)

Voting Yes: Arlint, Bahmuller, Callies, Donnell, Duffy, Krohmer, Mulally, Nelson, Pinnow, Schneider, Shorma, and Weisgram

Excused: Perry

**SB 77 : reinstate the restricted real estate broker's license for auctioneers and revise real estate licensing.**

Presented by: Representative Randy Gross  
 Proponents: Larry A. Nelson, South Dakota Association of Auctioneers, Canton  
 Charles Sutton, self, Flandreau  
 Val Jark, self, Aberdeen  
 Ted Souvignier, South Dakota Association of Auctioneers, Canton

**MOTION: DO PASS SB 77**

Moved by: Schneider  
Second by: Donnell  
Action: Prevailed by Majority Members Elect (11-0-2-0)

Voting Yes: Arlint, Bahmuller, Callies, Donnell, Duffy, Krohmer, Mulally, Pinnow, Schneider, Shorma, and Weisgram

Excused: Nelson and Perry

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 77 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**HB 1176 : revise certain provisions regarding on-sale alcoholic beverage licenses for use at municipality-owned facilities.**

Presented by: Representative Greg Jamison  
Proponents: Yvonne Taylor, South Dakota Municipal League, Fort Pierre  
Doug Abraham, South Dakota Retailers Association, Pierre

**MOTION: AMEND HB 1176**

1176A

On page 1, line 1, of the Introduced bill, delete "provide for a unified liquor license for municipal facilities" and insert "revise certain provisions regarding on-sale alcoholic beverage licenses for use at municipality-owned facilities"

On the Introduced bill, delete everything after the enacting clause and insert:

"

**Section 1. That § 35-4-14.1 be AMENDED:**

**35-4-14.1.** Notwithstanding the provisions of § 35-4-11, any municipality, by resolution, without election, but subject to referendum, may issue an on-sale license pursuant to subdivision 35-4-2(4) to a for use at any municipality-owned entertainment venue, event venue, event center, arena, performance hall, theater, outdoor amphitheater, convention center, stadium, athletic venue, recreation facility, municipal auditorium operated pursuant to chapter 9-52, or to a public convention hall operated pursuant to chapter 9-53 ~~for use during a convention activity or an entertainment event, including any theatrical or musical performance, rodeo, sporting event, or show.~~ The selling, serving, or dispensing of any alcoholic beverage at the municipal auditorium may not occur more than one hour before the commencement of the event or at any time after the event is concluded. The governing body of any municipality that has obtained an on-sale license pursuant to this section may contract with any person or entity for purposes of providing food and beverage services at the municipality-owned facility and the use of any license issued pursuant to this section. A license issued pursuant to this section may not be transferred.

"

Moved by: Shorma  
Second by: Arlint  
Action: Prevailed by voice vote

**MOTION: AMEND HB 1176**

1176B

On amendment (1176A),  
 On page 1, line 6, after "municipality" delete ", by resolution, without election, but subject to referendum,"  
 On page 1, line 7, after "may " insert "by resolution "  
 On page 1, line 7, remove the overstrikes from " pursuant to subdivision 35-4-2(4)"  
 On page 1, line 15, after "concluded. " insert "An on-sale license issued pursuant to this section must be used to support the primary public purpose of the municipality-owned facility during the hours the municipality-owned facility is open for primary purpose. A license issued pursuant to this section must not be used at any municipality-owned facility for the primary purpose of only providing food and beverage services to the public. There is no fee for a license under this section. "

Moved by: Shorma  
 Second by: Arlint  
 Action: Prevailed by voice vote

**MOTION: AMEND THE PENDING AMENDMENT**

1176C

On amendment (1176B),  
 On page 1, line 17, after "for" insert " its"

Moved by: Shorma  
 Second by: Krohmer  
 Action: Prevailed by voice vote

**MOTION: DO PASS HB 1176 AS AMENDED**

Moved by: Arlint  
 Second by: Krohmer  
 Action: Prevailed by Majority Members Elect (11-0-2-0)

Voting Yes: Arlint, Bahmuller, Callies, Donnell, Duffy, Krohmer, Mulally, Pinnow, Schneider, Shorma, and Weisgram

Excused: Nelson and Perry

**MOTION: DEFER HB 1239 UNTIL MONDAY, FEBRUARY 13<sup>TH</sup>, 2023**

**MOTION: ADJOURN**

Moved by: Krohmer  
 Second by: Schneider  
 Action: Prevailed by voice vote

Jean Denton, Committee Secretary

\_\_\_\_\_  
 /s/ MIKE WEISGRAM  
 Mike Weisgram, Chair