

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

400Q0600

SENATE BILL NO. 109

Introduced by: The Committee on Health and Human Services at the request of the Office of
the Governor

1 FOR AN ACT ENTITLED, An Act to revise the provisions for the risk pool to allow
2 uninsurable children to enroll and to provide for additional funding.

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

4 Section 1. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A person under the age of nineteen, who is not otherwise qualified for the risk pool pursuant
7 to § 58-17-85, may enroll in the risk pool if the following conditions are met:

8 (1) The person is a citizen of the United States of America and a resident of this state;

9 (2) The person has been rejected, or offered coverage conditioned upon exclusionary
10 riders, by at least two carriers in the individual market for comprehensive major
11 medical coverage in the last six months;

12 (3) The person has not had comprehensive major medical coverage or other creditable
13 coverage within the six months preceding application for the risk pool; and

14 (4) The person is not covered or eligible to be covered by any other creditable coverage.

15 The risk pool board may establish an open enrollment period for persons, which qualify for



1 enrollment pursuant to this section and which have been without creditable coverage for at least
2 twelve months, during the first twelve months following July 1, 2009. No enrollee is subject to
3 a preexisting waiting period as defined by § 58-17-84 during this twelve-month period. The
4 open enrollment period shall be sixty days in duration.

5 Section 2. That chapter 58-17 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any person qualifying for coverage in the risk pool pursuant to section 1 of this Act and who
8 does not enroll during the sixty-day open enrollment period is subject to a six-month waiting
9 period for preexisting conditions as defined by § 58-17-84.

10 Section 3. That § 58-17-126 be amended to read as follows:

11 58-17-126. Following the close of each fiscal year, the board shall determine the net
12 premiums and payments, the expenses of administration, and the incurred losses of the risk pool
13 for the year. In sharing losses among the carriers, the board may abate or defer in any part the
14 assessment of a carrier, if, in the opinion of the board, payment of the assessment would
15 endanger the ability of the carrier to fulfill its contractual obligations. The board may also
16 provide for an initial or interim assessment against carriers if necessary to assure the financial
17 capability of the risk pool to meet the incurred or estimated claims expenses or operating
18 expenses of the risk pool. This assessment may not exceed twenty-five cents per covered life
19 per month from the time period the risk pool becomes effective. Any assessment made after
20 June 30, 2009, may not be in excess of thirty-five cents per covered life per month. Net gains
21 shall be held at interest to offset future losses or allocated to reduce future assessments.

22 The assessment of each carrier shall be based upon the number of persons each carrier
23 covers through primary, excess, and stop loss insurance in this state and shall be as follows:

24 (1) In addition to the powers enumerated in §§ 58-17-68, 58-17-70, 58-17-85, and 58-17-

1 113 to 58-17-142, inclusive, the board may assess carriers in accordance with the
2 provisions of this section, and make advance interim assessments as may be
3 reasonable and necessary for the risk pool's organizational and interim operating
4 expenses;

5 (2) Following the close of each fiscal year, the board shall determine the expenses of
6 administration, the net premiums (premiums less reasonable administrative expense
7 allowances), and the incurred losses for the year, taking into account investment
8 income and other appropriate gains and losses. The deficit incurred by the risk pool
9 shall be recouped by assessments apportioned under this section by the board among
10 carriers and from other sources as may be allowed under law;

11 (3) Each carrier's assessment shall be determined by multiplying the total assessment of
12 all carriers as determined in subdivision (2) by a fraction, the numerator of which
13 equals the number of individuals in this state covered under health benefit plans and
14 certificates, including by way of excess or stop loss coverage, by that carrier, and the
15 denominator of which equals the total number of all individuals in this state covered
16 under health insurance policies and certificates, including by way of excess or stop
17 loss coverage, by all carriers, all determined as of the end of the prior calendar year;

18 (4) The board shall make reasonable efforts designed to ensure that each insured
19 individual is counted only once with respect to any assessment. For that purpose, the
20 board shall require each carrier that obtains excess or stop loss insurance to include
21 in its count of insured individuals all individuals whose coverage is reinsured,
22 including by way of excess or stop loss coverage, in whole or part. The board shall
23 allow a carrier who is an excess or stop loss carrier to exclude from its number of
24 insured individuals those who have been counted by the primary carrier, the primary

1 reinsurer, or the primary excess or stop loss carrier for the purpose of determining its
2 assessment under this section;

3 (5) Each carrier shall file with the board annual statements and other reports deemed to
4 be necessary by the board. The board shall determine each carrier's assessment based
5 on these annual statements and reports. The board may use any reasonable method
6 of estimating the number of insureds of a carrier if the specific number is unknown.
7 With respect to carriers that are excess or stop loss carriers, the board may use any
8 reasonable method of estimating the number of persons insured by each reinsurer or
9 excess or stop loss carrier;

10 (6) Each carrier may petition the board for an abatement or deferment of all or part of an
11 assessment imposed by the board. The board may abate or defer, in whole or in part,
12 the assessment if, in the opinion of the board, payment of the assessment would
13 endanger the ability of the carrier to fulfill ~~its~~ the carrier's contractual obligations. If
14 an assessment against a carrier is abated or deferred in whole or in part, the amount
15 by which the assessment is abated or deferred may be assessed against the other
16 carriers in a manner consistent with the basis for assessments set forth in this section.

17 The carrier receiving ~~such~~ the deferment is liable to the risk pool and remains liable
18 for the deficiency.

19 Any assessment of the carrier is due and payable on any covered person who is a resident
20 in this state regardless of the state of issuance of the policy or master policy.