State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

265D0181

HOUSE COMMERCE COMMITTEE

ENGROSSED NO. SB73 - 2/18/00

Introduced by: Senators Brosz, Daugaard, Lawler, and Shoener and Representatives Peterson, Konold, and Solum

FOR AN ACT ENTITLED, An Act to require insurers to disclose certain provisions with regard to usual, customary, and reasonable charges.

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

Section 1. That chapter 58-33A be amended by adding thereto a NEW SECTION to read as follows:

Any insurer that is subject to § 58-33A-1 offering to provide health benefits in this state through a policy, contract, or certificate that contains a provision limiting coverage to usual, customary, or reasonable charges shall provide prominent disclosure that the policy, certificate, or contract contains a usual, customary, and reasonable limitation and that this limitation may cause the insured to incur additional out-of-pocket expenses.An insurer may comply with this section by including the required disclosure in an outline of coverage.

Section 2. That § 58-33A-1 be amended to read as follows:

58-33A-1. ~~Sections 58-33A-1 to 58-33A-12, inclusive, apply~~ <u>This chapter applies</u> to all individual and group health policies which are solicited or sold in this state that are subject to chapters 58-15, 58-16, 58-17, 58-18, 58-18B, 58-37A, 58-38, 58-39, 58-40, and 58-41. However, ~~§§ 58-33A-1 to 58-33A-12, inclusive, do~~ <u>this chapter does</u> not apply to insurance

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policies and subscriber contracts subject to the medicare supplement requirements. Except for the exemptions specified in this section, ~~§§ 58-33A-1 to 58-33A-12, inclusive, apply~~ this chapter applies to any solicitation, negotiation, or effectuation of life insurance occurring within this state. ~~Sections 58-33A-1 to 58-33A-12, inclusive, apply~~ This chapter applies to any issuer of life insurance contracts including fraternal benefit societies. ~~Sections 58-33A-1 to 58-33A-12, inclusive, do~~ This chapter does not apply to:

(1) Group annuities;

(2) Credit life insurance;

(3) Group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements as provided by ~~§§ 58-33A-1 to 58-33A-12, inclusive~~ this chapter. These disclosure requirements extend to the issuance or delivery of certificates as well as to the master policy);

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended to January 1, 1999;

(5) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account; or

(6) Variable annuities under which the amount varies according to the investment experience.

Section 3. That § 58-33A-2 be amended to read as follows:

58-33A-2. The purpose of ~~§§ 58-33A-1 to 58-33A-12, inclusive,~~ this chapter is to establish guidelines and permissible and impermissible standards of conduct in the solicitation of and advertising of life and health insurance in a manner which:

(1) Prevents unfair, deceptive, and misleading advertising;

(2) Is conducive to accurate presentation and description to the insurance-buying public

through the advertising media and material used by insurance agents and companies;

(3) Provides for the full disclosure of the benefits, limitations, and exclusions of policies sold;

(4) Sets forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts;

(5) Requires insurers to deliver to purchasers of life insurance information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs;

(6) Improves the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration;

(7) Improves the ability of the buyer to evaluate the relative costs of similar plans of life insurance;

(8) Provides reasonable standardization and simplification of terms and coverages of health insurance policies and subscriber contracts of nonprofit hospital, medical, and dental service associations to facilitate public understanding and comparison;

(9) Eliminates provisions contained in health insurance policies and subscriber contracts of nonprofit hospital, medical, and dental service associations which may be misleading or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and

(10) Provides for full disclosure in the sale of life or health coverages.

Section 4. That § 58-33A-3 be amended to read as follows:

58-33A-3. For the purposes of ~~§§ 58-33A-1 to 58-33A-12, inclusive~~ <u>this chapter</u>, the term, advertisement, includes:

(1) Any printed and published material, audio visual material, and descriptive literature

of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, and similar displays;

(2) Any descriptive literature and sales aids of all kinds issued by an insurer, agent, producer, broker or solicitor for presentation to members of the insurance-buying public, including circulars, leaflets, booklets, depictions, illustrations, Internet communications, form letters, and lead-generating devices of all kinds;

(3) Any prepared sales talks, presentations, and material for use by agents, brokers, producers, and solicitors whether prepared by the insurer or the agent, broker, producer, or solicitor; and

(4) Any advertising material included with a policy if the policy is delivered and material is used in the solicitation of renewals and reinstatements.

Section 5. That § 58-33A-4 be amended to read as follows:

58-33A-4. For the purposes of ~~§§ 58-33A-1 to 58-33A-12, inclusive~~ this chapter, the term, advertisement, does not include:

(1) Any material to be used solely for the training and education of an insurer's employees, agents, or brokers;

(2) Any material used in-house by insurers;

(3) Any communications within an insurer's own organization not intended for dissemination to the public;

(4) Any individual communications of a personal nature with current policyholders other than material urging such policyholders to increase or expand coverages;

(5) Any correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;

(6) Any court-approved material ordered by a court to be disseminated to policyholders; or

(7) Any general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged if the announcement clearly indicates that it is preliminary to the issuance of a booklet and the announcement does not describe the benefits under the contract or program or describe advantages as to the purchase of the contract or program.

Section 6. That § 58-33A-7 be amended to read as follows:

58-33A-7. The director may promulgate rules pursuant to chapter 1-26 to establish specific standards consistent with § 58-33A-2. The rules may include standards of full and fair disclosure, that set forth the manner, content and required disclosure. Except for conversion policies issued pursuant to a contractual conversion privilege under a group, the rules may apply to the sale of individual and group health insurance subject to ~~§§ 58-33A-1 to 58-33A-12, inclusive,~~ this chapter and shall be in addition to and in accordance with applicable laws of this state. The rules may include:

(1) Terms of renewability;

(2) Initial and subsequent conditions of eligibility;

(3) Nonduplication of coverage provisions;

(4) Coverage of dependents;

(5) Preexisting conditions;

(6) Termination of insurance;

(7) Probationary periods;

(8) Limitations, exceptions, and reductions;

(9) Elimination periods;

(10) Requirements for replacement;

(11) Recurrent conditions;

(12) Prohibitions on the use of terms, information, phrases, or implied affiliations in advertising;

(13) Prominence, form, and style of any advertisement;

(14) Information to be disclosed on advertising or solicitation materials;

(15) Use of testimonials;

(16) Special offers or enrollment periods;

(17) Coverage comparisons;

(18) Identification of insurers and agents;

(19) Prearrangements or preneed funeral contracts; and

(20) The definition of terms including the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable and noncancellable.

Section 7. That § 58-33A-8 be amended to read as follows:

58-33A-8. Any information required to be disclosed by rules promulgated pursuant to ~~§§ 58-33A-1 to 58-33A-12, inclusive,~~ this chapter shall be set out conspicuously and in close conjunction with the statements to which the information relates or under appropriate captions of such prominence that it does not minimize, render obscure, present in an ambiguous fashion, or intermingle with the context of the advertisement so as to be confusing or misleading.

Section 8. That § 58-33A-12 be amended to read as follows:

58-33A-12. If the director has reason to believe that an advertisement has the capacity and tendency to mislead or deceive the public or otherwise does not comply with ~~§§ 58-33A-1 to 58-33A-12, inclusive,~~ this chapter or the rules promulgated pursuant to ~~§§ 58-33A-1 to 58-33A-12, inclusive~~ this chapter, the director may require an insurer or insurance producer to submit all or any part of the advertising material for review or approval prior to use, in addition to any other remedies allowed by law.

BILL HISTORY

1/15/00 First read in Senate and referred to Commerce. S.J. 60

1/20/00 Scheduled for Committee hearing on this date.

1/20/00 Deferred by Chair.

1/27/00 Scheduled for Committee hearing on this date.

2/1/00 Scheduled for Committee hearing on this date.

2/1/00 Commerce Do Pass, Passed, AYES 7, NAYS 0. S.J. 268

2/2/00 Senate Do Pass, Passed, AYES 20, NAYS 15. S.J. 294

2/3/00 First read in House and referred to Commerce. H.J. 406

2/17/00 Scheduled for Committee hearing on this date.

2/17/00 Commerce Do Pass Amended, Passed, AYES 9, NAYS 0. H.J. 718