

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

400E0307

HOUSE BILL NO. 1042

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

1 FOR AN ACT ENTITLED, An Act to revise small employer health plan requirements by
2 clarifying the definition of a small employer, exceptions to issuing a policy, rating provisions
3 and minimum participation requirements, and by deleting obsolete references relating to basic
4 and standard plans.

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

6 Section 1. That § 58-18B-1 be amended to read as follows:

7 58-18B-1. Terms used in this chapter mean:

8 (1) "Actuarial certification," a written statement by a member of the American Academy
9 of Actuaries or other individual approved by the director that a small employer carrier
10 is in compliance with the provisions of this chapter, based upon the person's
11 examination, including a review of the appropriate records and of the actuarial
12 assumptions and methods used by the carrier in establishing premium rates for
13 applicable health benefit plans;

14 (2) "Base premium rate," the lowest premium rate charged or which could have been
15 charged for each class of business for a rating period under a rating system for that

1 class of business, by the small employer carrier to small employers with similar case
2 characteristics for health benefit plans with the same or similar coverage;

3 (3) "Carrier," any person who provides health insurance in this state. In this chapter,
4 carrier includes a licensed insurance company, a prepaid hospital or medical service
5 plan, a health maintenance organization, a multiple employer welfare arrangement, or
6 any person providing a plan of health insurance subject to state insurance regulation;

7 (4) "Case characteristics," demographic or other relevant characteristics of a small
8 employer, as determined by a small employer carrier, which are considered by the
9 carrier for the determination of premium rates. Claim experience, health status, and
10 duration of coverage since issue are not case characteristics in this chapter;

11 (5) "Class of business," all or a distinct grouping of small employers as shown on the
12 records of the small employer carrier;

13 (a) A distinct grouping may only be established by a small employer carrier on the
14 basis that the applicable health benefit plans:

15 (i) Are marketed and sold through individuals and organizations which are
16 not participating in the marketing or sale of other distinct groupings of
17 small employers for such small employer carrier;

18 (ii) Have been acquired from another small employer carrier as a distinct
19 grouping of plans;

20 (iii) Are provided through an association with membership of not less than
21 twenty-five small employers which has been formed for purposes other
22 than obtaining insurance; or

23 (iv) Are in a class of business that meets the requirements for exception to
24 the restrictions related to premium rates provided in subsection

1 58-18B-3(1)(a);

2 (b) A small employer carrier may establish no more than two additional groupings
3 under each of the subparagraphs in subsection (a) on the basis of underwriting
4 criteria which are expected to produce substantial variation in the health care
5 costs;

6 (c) The director may approve the establishment of additional distinct groupings
7 upon application to, and a finding by, the director that such action would
8 enhance the efficiency and fairness of the small employer insurance
9 marketplace;

10 (6) "Director," the director of the Division of Insurance;

11 (7) "Division," the Division of Insurance of the Department of Commerce and Regulation;

12 (8) "Index rate," the arithmetic average of the applicable base premium rate and the
13 corresponding highest premium rate for each class of business for small employers
14 with similar case characteristics;

15 (9) "New business premium rate," the premium rate charged or offered by a small
16 employer carrier to small employers with similar case characteristics for newly issued
17 health benefit plans with the same or similar coverage for each class of business for
18 a rating period;

19 (10) "Rating period," the calendar period for which premium rates established by a small
20 employer carrier are assumed to be in effect, as determined by the small employer
21 carrier;

22 (11) "Small employer," any person, firm, corporation, partnership, or association actively
23 engaged in business which on an average of its working days during the preceding
24 year, employed no more than fifty and no less than two eligible employees and who

1 employs at least two employees on the first day of the plan year. In determining the
2 number of ~~eligible~~ employees, companies which are affiliated companies or which are
3 eligible to file a combined tax return for purposes of state taxation are considered to
4 be one employer;

5 (12) "Small employer carrier," any carrier which offers health benefit plans covering the
6 employees of a small employer;

7 (13) "Affiliate" or "affiliated," any person who, directly or indirectly, through one or more
8 intermediaries, controls or is controlled by, or is under common control with, any
9 other specified person;

10 (14) ~~"Basic health benefit plan," a low cost health benefit plan developed pursuant to~~
11 ~~§§ 58-18B-29 to 58-18B-32, inclusive;~~

12 ~~—(15)—"Committee," the Health Benefit Plan Committee created pursuant to §§ 58-18B-29~~
13 ~~to 58-18B-32, inclusive;~~

14 ~~—(16)~~ "Dependent," except as otherwise required by this title, any spouse, any unmarried
15 child under the age of nineteen years, any unmarried child who is a full-time student
16 under the age of twenty-three and who is financially dependent upon the parent, and
17 any unmarried child of any age who is medically certified as disabled and dependent
18 upon the parent;

19 ~~(17)~~(15) "Eligible employee," any employee who works on a permanent basis and has
20 a normal work week of thirty or more hours. The term includes any sole
21 proprietor, any partner, and any independent contractor, if the sole proprietor,
22 partner, or independent contractor is included as an employee under a health
23 benefit plan of a small employer, but does not include any employee who works
24 less than thirty hours or on a temporary or substitute basis;

1 (16) "Employee," has the meaning given such term under Section 3(6) of Title I of the
 2 Employee Retirement Income Security Act of 1974 (ERISA) as amended to
 3 January 1, 2001;

4 ~~(18)~~(17) "Health benefit plan," any hospital or medical policy or certificate, hospital or
 5 medical service plan, or health maintenance organization subscriber contract.
 6 The term does not include specified disease, hospital indemnity, fixed
 7 indemnity, accident-only, credit, dental, vision, prescription drug, medicare
 8 supplement, long-term care, or disability income insurance, coverage issued as
 9 a supplement to liability insurance, worker's compensation or similar insurance,
 10 or automobile medical payment insurance;

11 ~~(19)~~(18) "Restricted network provision," any provision of a health benefit plan that
 12 conditions the payment of benefits, in whole or in part, on the use of health
 13 care providers that have entered into a contractual arrangement with the carrier
 14 to provide health care services to covered individuals;

15 ~~(20)~~ ~~"Standard health benefit plan," any health benefit plan developed pursuant to~~
 16 ~~§§ 58-18B-29 to 58-18B-31, inclusive.~~

17 Section 2. That § 58-18B-17 be amended to read as follows:

18 58-18B-17. The premium rates for an individual covered in a small employer plan may not
 19 exceed the premium rate for any other individual covered under the same small employer carrier
 20 because of age alone by a factor of 3:1. A small employer carrier may not require any individual
 21 to pay any premium or contribution that is greater than that for a similarly situated individual
 22 enrolled in the plan. Nothing in this section prohibits a group health plan, and a health insurance
 23 issuer offering group health insurance coverage, from establishing premium discounts or rebates
 24 or modifying otherwise applicable copayments or deductibles in return for adherence to

1 programs of health promotion or disease prevention.

2 Section 3. That § 58-18B-20 be amended to read as follows:

3 58-18B-20. A small employer carrier shall issue health benefit plans to any small employer
4 that applies for a plan and agrees to make the required premium payments and to satisfy the other
5 reasonable provisions of the health benefit plan not inconsistent with this chapter. If, on the first
6 day of the plan year, a small employer plan has fewer than two participants who are current
7 employees, the carrier is not required to issue a policy to the small employer. A small employer
8 carrier may apply reasonable criteria in determining whether to accept a small employer into a
9 particular class of business if:

- 10 (1) The criteria are not related to the health status or claim experience of the small
11 employer;
- 12 (2) The criteria are applied consistently to all small employers applying for coverage in
13 the class of business; and
- 14 (3) The small employer carrier provides for the acceptance of all eligible small employers
15 into one or more classes of business.

16 The provisions of this section do not apply to a class of business into which the small
17 employer carrier is no longer enrolling new small businesses. If the director determines that all
18 carriers in the small employer market have met the two percent threshold, the threshold shall,
19 upon order of the director, be expanded an additional two percent. The threshold shall be
20 expanded in additional two percent increments if all small employer carriers meet the previous
21 threshold. No small employer carrier is required to issue coverage to any small employer if the
22 small employers who are at high-risk constitute two percent of that carrier's earned premium on
23 an annual basis from small employer health benefit plans. The director may promulgate rules
24 pursuant to chapter 1-26 to determine which policies may be used to determine the two percent

1 threshold, the procedures involved, and the applicable time frames. In making that determination,
2 the director shall develop a method designed to limit the number of high risk groups to which
3 any one carrier may be required to issue coverage.

4 Section 4. That § 58-18B-25 be amended to read as follows:

5 58-18B-25. In applying minimum participation requirements with respect to a small
6 employer, ~~no~~ a small employer carrier may consider employees or dependents who have
7 creditable coverage in determining whether the applicable percentage of participation is met.
8 ~~With respect to a small employer with between two and ten eligible employees, a small employer~~
9 ~~carrier may consider employees or dependents who have coverage under another health benefit~~
10 ~~plan sponsored by the small employer in applying minimum participation requirements.~~
11 Creditable coverage does not include individual coverage. If any employee or dependent with
12 other creditable coverage is to be considered towards calculating the applicable percentage of
13 participation, the employee or dependent shall be counted as participating in the plan.

14 Section 5. That § 58-18B-29 be repealed.

15 ~~58-18B-29. No later than July 1, 1995, the Governor shall appoint a Health Benefit Plan~~
16 ~~Committee. The committee shall consist of nine members and shall be composed of the~~
17 ~~chairperson of the House Commerce Committee or a designee, the chairperson of the Senate~~
18 ~~Commerce Committee or a designee, the representatives of carriers, small employers and~~
19 ~~employees, health care providers, and agents. The committee shall recommend the form and level~~
20 ~~of coverages to be made available by small employer carriers pursuant to §§ 58-18B-20 to~~
21 ~~58-18B-28, inclusive. The initial committee members shall be appointed as follows: four of the~~
22 ~~members to serve a term of two years and three of the members to serve a term of three years.~~
23 ~~Subsequent committee members shall serve for a term of three years. Not all committee members~~
24 ~~may be of the same political party. A vacancy on the committee shall be filled by the Governor~~

1 for the unexpired term. A committee member may be removed by the Governor for cause.

2 Section 6. That § 58-18B-31 be repealed.

3 ~~58-18B-31. The plan recommended by the committee may include cost containment features~~
4 ~~such as:~~

5 ~~(1) Utilization review of health care services, including review of medical necessity of~~
6 ~~hospital and physician services;~~

7 ~~(2) Case management;~~

8 ~~(3) Selective contracting with hospitals, physicians, and other health care providers;~~

9 ~~(4) Reasonable benefit differentials applicable to providers that participate or do not~~
10 ~~participate in arrangements using restricted network provisions; and~~

11 ~~(5) Other managed care provisions. Managed care standards or guidelines of care limiting~~
12 ~~access to or care by any provider may be adopted only after reasonable consideration~~
13 ~~as to professional standards of such providers described in § 58-17-54 and only after~~
14 ~~consultation with the licensing boards governing the providers described in~~
15 ~~§ 58-17-54 to be reviewed or screened.~~

16 Section 7. That § 58-18B-32 be repealed.

17 ~~58-18B-32. The committee shall submit the health benefit plans described in §§ 58-18B-30~~
18 ~~and 58-18B-31 to the director for approval within one hundred eighty days after the appointment~~
19 ~~of the committee. After approval, the director may ask the committee to review the standard and~~
20 ~~basic plans for recommendations on their modification. Any modifications recommended are~~
21 ~~subject to the approval of the director.~~

22 Section 8. That § 58-18B-55 be amended to read as follows:

23 58-18B-55. Any policy or certificate of specified disease, short-term hospital-surgical care
24 of six months or less duration, hospital confinement indemnity, limited benefit health insurance,

1 or other policy or certificate that provide benefits less than that of a major medical plan that is
2 offered to a small employer in this state is exempt from the provisions of this chapter only if the
3 carrier offering the policy or certificate at the time of filing for policy form approval, submits a
4 statement certifying that policies or certificates described in this section are being offered and
5 marketed as supplemental health insurance or as individual health benefit plans of six-month
6 duration or less and not renewable, and not as a substitute for hospital or medical expense
7 insurance or major medical insurance. For policy forms approved prior to July 1, 1998, the
8 carrier shall submit such a statement with the director.

9 For purposes of this section a major medical policy is any policy which provides benefits
10 which are actuarially equivalent to or exceed the basic plan as was approved ~~pursuant to~~
11 ~~§ 58-18B-32~~ and adopted by rule by the director pursuant to chapter 1-26. Policies which are
12 not certified pursuant to this section and which are not major medical policies may not be used
13 as a substitute for major medical policies and must provide for adequate disclosure of the scope
14 of the benefits contained therein.