



## 2020 South Dakota Legislature

# House Bill 1247

Introduced by: **Representative** Cwach

1 **An Act to create the medical reinsurance program and to make an appropriation**  
 2 **therefor.**

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

4 **Section 1.** That a NEW SECTION be added:

5 **58-48-1. Medical reinsurance program--Establishment.**

6 The medical reinsurance program is hereby established in the Division of  
 7 Insurance.

8 **Section 2.** That a NEW SECTION be added:

9 **58-48-2. Definitions.**

10 Terms used in this chapter mean:

11 (1) "Attachment point," the threshold dollar amount for cost of claims incurred by a  
 12 reinsurance eligible health benefit plan for an insured individual's covered benefits  
 13 in a benefit year after which additional cost of claims are eligible for reinsurance  
 14 payments;

15 (2) "Annual assessment," the assessment percentage multiplied by the assessment  
 16 base;

17 (3) "Assessment base," the gross amount of premium earned by an insurer during a  
 18 benefit year that was derived from a health benefit plan delivered or issued for  
 19 delivery in the state;

20 (4) "Assessment percentage," the percentage established by the department that is  
 21 used for the purpose of computing the annual assessment;

22 (5) "Benefit year," the calendar year for which a health insurer provides coverage  
 23 through an individual health insurance policy;

24 (6) "Coinsurance rate," the rate established by the department that is used for the  
 25 purpose of computing the reinsurance payment;

- 1       (7) "Department," the Department of Labor and Regulation;  
 2       (8) "Grandfathered health plan," an individual health plan governed by the provisions  
 3       of 42 U.S.C. § 18011;  
 4       (9) "Health benefit plan," as defined in § 58-17-66;  
 5       (10) "Reinsurance cap," the maximum dollar amount of each claim incurred for an  
 6       insured individual's covered benefits in a benefit year that is established by the  
 7       department after which additional cost of claims are not eligible for a reinsurance  
 8       payment;  
 9       (11) "Reinsurance eligible health benefit plan," a health benefit plan providing individual  
 10       coverage that:  
 11       (a) Is delivered or issued for delivery in this state; and  
 12       (b) Is not a grandfathered health plan;  
 13       (12) "Reinsurance eligible individual," an individual who is insured by a reinsurance  
 14       eligible health benefit plan before January 2, 2022;  
 15       (13) "Reinsurance payment," an amount paid by the medical reinsurance program to a  
 16       health insurer under a reinsurance eligible health benefit plan;  
 17       (14) "Secretary," the secretary of the department.

18       **Section 3.** That a NEW SECTION be added:

19               **58-48-3. Actuarial review--Medical reinsurance program--Funding for**  
 20       **actuarial review.**

21               The secretary shall, before January 1, 2021, complete an actuarial review of the  
 22       medical reinsurance program established under this chapter to confirm that the program  
 23       satisfies the following requirements:

- 24       (1) Provides access to quality health care that is at least as comprehensive and  
 25       affordable as would be provided in the absence of the program;  
 26       (2) Provides coverage to a comparable number of state residents as would be provided  
 27       coverage in the absence of the program;  
 28       (3) Does not increase the federal deficit; and  
 29       (4) Is projected to generate revenue that is no less than the projected expenditure of  
 30       the program.

31               The secretary shall receive up to three hundred thousand dollars of the health care  
 32       trust funds distributed to the general fund pursuant to § 4-5-29.1 as an interest-free loan  
 33       for the purpose of completing the actuarial review required under this section. The  
 34       secretary shall approve vouchers and the state auditor shall draw warrants to pay

1 expenditures authorized by this Act. The secretary shall repay the loan before January 1,  
2 2023 through annual assessments collected under § 58-48-6.

3 **Section 4.** That a NEW SECTION be added:

4 **58-48-4. State innovation waiver--Federal pass-through funding--**  
5 **Application.**

6 If the medical reinsurance program satisfies the requirements of § 58-48-3, the  
7 secretary shall, before July 1, 2021, apply to the United States secretary of health and  
8 human services under 42 U.S.C. § 18052, for a state innovation waiver and federal pass  
9 through funding to implement the medical reinsurance program for benefit years  
10 beginning January 1, 2022.

11 **Section 5.** That a NEW SECTION be added:

12 **58-48-5. Reinsurance payment--Eligibility--Amount.**

13 The secretary shall make a reinsurance payment to an insurer of a reinsurance  
14 eligible health benefit plan if the insurer's cost of claims for a reinsurance eligible  
15 individual's covered benefits in a calendar year exceeds the attachment point. The amount  
16 of the payment is the product of the coinsurance rate and the insurer's cost of claims for  
17 the reinsurance eligible individual that exceeds the attachment point. A reinsurance  
18 payment may not exceed the reinsurance cap.

19 **Section 6.** That a NEW SECTION be added:

20 **58-48-6. Annual assessment--Requirements.**

21 For benefit years beginning January 1, 2022, the annual assessment is imposed on  
22 each insurer authorized to deliver or issue for delivery a health benefit plan in the state.  
23 Each insurer shall compute, report, and pay the annual assessment in the time and  
24 manner established by the department.

25 **Section 7.** That a NEW SECTION be added:

26 **58-48-7. Promulgation of rules--Restrictions.**

27 The department shall promulgate rules, pursuant to chapter 1-26, to establish:  
28 (1) ~~The attachment point, assessment percentage, coinsurance rate, and reinsurance~~  
29 cap;

- 1        (2) The application procedures, requirements, and timing for requesting and  
 2            processing a reinsurance payment;  
 3        (3) Time and manner for reporting and paying the assessment;  
 4        (4) Penalties for the failure to timely report or timely pay the assessment; and  
 5        (5) Reporting requirements for a reinsurer of a reinsurance eligible health benefit plan.  
 6            The department may not change the attachment point, reinsurance cap, or  
 7            coinsurance rate for a benefit year after the benefit year begins.

8        **Section 8.** That § 4-5-29.1 be AMENDED:

9            **4-5-29.1. Health care trust fund--Investment officer to calculate amount**  
 10          **eligible for distribution--Transfer to state general fund.**

11            Pursuant to S.D. Const., Art. XII, § 5, the state investment officer shall determine  
 12          the market value of the health care trust fund as of December 31, 2003, and each calendar  
 13          year thereafter less the investment expenses transferred pursuant to § 4-5-30. The state  
 14          investment officer shall calculate an amount equal to four percent of that market value,  
 15          without invading principal, as eligible for distribution, except for fiscal year 2021 the state  
 16          investment officer shall calculate an amount equal to the sum of four percent of the market  
 17          value plus the maximum amount authorized to be loaned under chapter 58-48.

18            For the purpose of this section, the term, principal, means the sum of all  
 19          contributions to the fund. Beginning with the distribution in fiscal year 2008, the market  
 20          value shall be determined by adding the market value of the trust fund at the end of the  
 21          sixteen most recent calendar quarters as of December thirty-first, and dividing the sum  
 22          by sixteen. Upon notice of that amount by the state investment officer, the state treasurer  
 23          shall transfer the amount from the health care trust fund to the state general fund as soon  
 24          as practicable after July first of the next fiscal year.