

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

733T0379

HOUSE BILL NO. 1272

Introduced by: Representatives Haggar, Bolin, Hansen (Jon), Kirkeby, Kirschman, Moser, Munsterman, Vanneman, and Wick and Senators Lederman, Begalka, Hansen (Tom), Juhnke, and Maher

1 FOR AN ACT ENTITLED, An Act to allow the sale of health benefit plans approved in select
2 other states to be sold in South Dakota and to grant the director authority to pursue a multi-
3 state consortium to grant automatic reciprocity for the sale of health benefit plans approved
4 by the participating consortium states.

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

6 Section 1. That chapter 58-6 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The director shall issue a certificate of authority to any applicant insurer that complies with
9 the provisions of this chapter.

10 Section 2. That § 58-6-13 be amended to read as follows:

11 58-6-13. No foreign insurance company may be admitted to do business in the State of
12 South Dakota until it has fully complied with the following requirements, in addition to such
13 other requirements as may be specifically provided:

14 (1) Such company shall have had two continuous calendar years of operating experience



1 as of the date of application to do business in this state; and

2 (2) Shall have been examined within the thirty-six months next preceding the date of
3 application to do business in this state; and

4 ~~(3) Shall fully satisfy any retaliatory requirements imposed by the laws and regulations
5 which the applying company's state of incorporation imposes upon South Dakota
6 insurance companies seeking admission to such state.~~

7 Subdivisions (1) and (2) do not apply to a company which is a wholly owned subsidiary, or
8 which is the successor in interest, through merger or consolidation, of an insurer which is an
9 authorized insurer in this state or to a company which satisfies the director that it is in fact a
10 continuation of an older organization. The director may waive the provisions of subdivisions
11 (1) and (2) if a special need or circumstance, as determined by the director, can be demonstrated.

12 Section 3. In accordance with the provisions of this Act, the director shall identify at least
13 five states with insurance laws sufficiently consistent with South Dakota laws. The director shall
14 approve for sale in South Dakota selected health benefit policies that have been approved for
15 issuance in those other states where the insurer is authorized to engage in the business of
16 insurance so long as the insurer is also authorized to engage in the business of insurance in this
17 state and provided that the policy meets the requirements set forth in Title 58. High deductible
18 health plans that meet national standards for comprehensive medical and surgical coverage may
19 be among the policies automatically approved in South Dakota if approved in the states
20 identified as acceptable by the director.

21 Section 4. A policy approved and issued pursuant to this Act shall be treated as if it were
22 issued by an insurer domiciled in South Dakota regardless of the insurer's actual domiciliary.

23 Section 5. Any insurer selling an insurance policy pursuant to this Act and any plan
24 approved under this Act, shall satisfy actuarial standards and insurer solvency requirements set

1 forth by the National Association of Insurance Commissioners (NAIC) and adopted by rule
2 promulgated by the director so long as the regulation is not inconsistent with NAIC standards.

3 Section 6. Any policy sold in South Dakota under the coverage and administrative laws and
4 regulations of another state that are not covered by a guarantee association or similar association
5 of that state shall be protected under the South Dakota Life and Health Insurance Guaranty
6 Association Act under chapter 58-29C.

7 Section 7. The director shall determine whether an insurer satisfies the standards required
8 by this section and may not approve a policy or plan that is not in compliance with this Act. The
9 director shall determine whether the policies sold pursuant to this Act continue to satisfy the
10 requirements set forth in Title 58. The director shall suspend or revoke new sales of out-of-state
11 policies if the laws and regulations of those states are determined to egregiously harm South
12 Dakota residents. Upon suspension or revocation, the issuers of the out-of-state policies shall
13 notify in writing all affected South Dakota policyholders of the suspension or revocation
14 determination by the director.

15 Section 8. The director shall explore with other insurance directors the creation of a
16 consortium of like-minded states that could establish rules of reciprocity for the approval of
17 health benefit plans among the participating states.

18 The director shall solicit the thoughts and report a consensus, where one exists, of the other
19 directors interested in creating a consortium of like-minded states in establishing rules of
20 reciprocity for the approval of health benefit plans. Issues the director shall consider include:

- 21 (1) Whether the consortium should involve only high deductible individual policies, all
22 comprehensive health insurance policies, both of these types of individual policies
23 plus small group policies, or all health insurance policies;
- 24 (2) Whether insurers should be free to price differently among consortium states

- 1 dependent on health care costs and market conditions;
- 2 (3) Whether a policy approved in a primary state shall be automatically available in all
3 secondary states of the consortium, or available at the option of the insurer;
- 4 (4) In areas where an associated preferred provider network is absent, whether sale of
5 policies should be prohibited, disclaimers should be required, or the sale of policies
6 should be regulated only by market forces and conditions;
- 7 (5) The adequacy for a multi-state consortium of existing state laws on insurer financial
8 solvency, guarantee funds and imposition and collection of premium taxes;
- 9 (6) The authority of a secondary state to deal with customer complaints concerning a
10 multi-state policy;
- 11 (7) Whether and when an insurer selling a policy approved in a primary state must notify
12 the commissioner of a secondary state that the insurer is marketing the policy in the
13 secondary state;
- 14 (8) Whether secondary state insurers, in order to sell competitive policies, may match
15 any less restrictive primary state rules governing policies sold in the secondary state,
16 and whether disclaimers to warn potential customers shall be required on policies and
17 promotional materials in the secondary state;
- 18 (9) Whether any of the issues identified in this subsection require the enactment of
19 uniform laws in the consortium states;
- 20 (10) Estimated savings to customers from policy approval only in the primary state and
21 from uniform or less restrictive policies across the consortium states; and
- 22 (11) Other issues deemed appropriate by the directors to implement a multi-state
23 consortium.

24 Section 9. The director shall submit a report to the Legislature every year detailing the

1 progress made towards forming a consortium. If the director identifies states interested in
2 creating a consortium, the director shall submit a proposal to the Legislature detailing the
3 proposed consortium and rules along with a recommendation of approval or disapproval. The
4 report shall include the proposed rules and conditions of the proposed consortium, aimed at
5 protecting South Dakota insurance customers.

6 Section 10. Except as provided in this Act, a health insurance issuer with respect to its offer,
7 sale, rating, benefit payment requirements, renewal, and issuance of health insurance coverage
8 in South Dakota is exempt from any covered laws of South Dakota as the secondary state and
9 any rules, regulations, agreements, or orders sought or issued by the director under, or related
10 to, the covered laws to the extent that the laws would:

11 (1) Make unlawful or regulate, directly or indirectly, the operation of the health
12 insurance issuer operating in South Dakota as a secondary state, except that the
13 director may require an issuer:

14 (a) To pay, on a nondiscriminatory basis, applicable premium and other taxes,
15 including high risk pool assessments and other assessments which are levied
16 on insurers and surplus lines insurers, brokers, or policyholders under the laws
17 of South Dakota;

18 (b) To register with and designate the director as its agent solely for the purpose
19 of receiving service of legal documents or process;

20 (c) To submit to examinations of its financial condition in accordance with the
21 policies and regulations established through the National Association of
22 Insurance Commissioners for accreditation of states to perform these
23 examinations;

24 (d) To comply with an injunction issued by a court of competent jurisdiction,

1 upon a petition by the director;

2 (e) To participate, on a nondiscriminatory basis, in any insurance insolvency
3 guaranty association or similar association to which a health insurance issuer
4 in the state is required to belong;

5 (f) To comply with any state law regarding fraud and abuse, except that if the
6 state seeks an injunction regarding the conduct described in this subsection,
7 the injunction shall be obtained from a court of competent jurisdiction;

8 (g) To comply with any state law regarding unfair claims settlement practices; and

9 (h) To comply with the applicable requirements for external review procedures
10 with respect to coverage offered in the state;

11 (2) Discriminate against the issuer issuing insurance in both the primary state and in any
12 secondary state.

13 Section 11. Nothing in this section may be construed to prohibit a health insurance issuer:

14 (1) From terminating or discontinuing coverage or a class of coverage in accordance with
15 the laws of the primary state;

16 (2) From reinstating lapsed coverage; or

17 (3) From retroactively adjusting the rates charged an insured individual if the initial rates
18 were set based on material misrepresentation by the individual at the time of issue.

19 Section 12. A health insurance issuer may not offer for sale individual health insurance
20 coverage in South Dakota as a secondary state unless that coverage is currently offered for sale
21 in the primary state.

22 Section 13. A person acting, or offering to act, as an agent or broker for a health insurance
23 issuer with respect to the offering of individual health insurance coverage shall obtain a license
24 from South Dakota, with commissions or other compensation subject to the provisions of the

1 laws of South Dakota, except that South Dakota may not impose any qualification or
2 requirement which discriminates against a nonresident agent or broker.

3 Section 14. Each health issuer issuing individual health insurance coverage in both primary
4 and secondary states shall submit to the insurance director of each state in which it intends to
5 offer the coverage before it may offer individual health insurance coverage in the
6 state:

- 7 (1) A copy of the plan of operation or feasibility study or any similar statement of the
8 policy being offered and its coverage which shall include the name of its primary
9 state and its principal place of business;
- 10 (2) Written notice of any change in its designation of its primary state; and
- 11 (3) Written notice from the issuer of the issuer's compliance with all the laws of the
12 primary state.

13 Section 15. Nothing in this Act affects the authority of any federal or state court to enjoin
14 the solicitation or sale of individual health insurance coverage by a health insurance issuer to
15 any person or group who is not eligible for that insurance.

16 Section 16. Out-of-state companies offering health benefit plans under this Act are subject
17 to regulation by the director with regard to enforcement of the contractual benefits under the
18 health benefit plan, including the requirements regarding prompt payment of claims for benefits.

19 Section 17. The director shall promulgate rules pursuant to chapter 1-26 necessary to
20 implement this Act.

21 Section 18. Any dispute resolution mechanism or provision for notice and hearing in this
22 Act applies to insurers issuing and delivering plans pursuant to this Act.

23 Section 19. If the provisions of this Act conflict with any other provisions of these statutes,
24 the provisions of this Act shall control.