



# *South Dakota Legislative Research Council*

## *Issue Memorandum 95-23*

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### **OVERVIEW OF SOUTH DAKOTA'S 1995 HEALTH CARE LEGISLATION**

#### **Introduction**

The spark that ignited health care issues in previous legislative sessions was not in evidence in the 1995 Legislative Session. Despite a lack of the urgency that was apparent in other years, the Legislature considered a number of important and sometimes controversial pieces of legislation that shared a common denominator in their relation in one way or another to health care.

Legislation ranged from a major reform of small employer group health insurance, consideration of the moratorium on nursing home beds, mental health provisions, and a gross receipts tax on health care services to changes in requirements for health care professionals which enhance the availability of rural health care. Bills on discriminatory drug pricing and licensing of out-of-state pharmacies were the focus of lively debate, but they ultimately failed to pass. This memorandum will briefly describe these bills and others which are related to health care.

#### **Incremental Health Insurance Reform**

The Governor's bill to reform the small employer health insurance market, SB 217, followed last year's reform of group health insurance. This year's bill guarantees the issuance of standard and basic plans by any

carrier in the small group health insurance market, allows the Director of Insurance to adjust risk among carriers, requires the Division of Insurance and the Department of Health to report to the 1996 Legislature on extending health insurance coverage to medically uninsurable individuals who are not part of a small group, and repeals the health insurance risk pool for medically uninsurable persons which was created by the 1994 Legislature.

Some other attempts at health care reform did not succeed. SB 100 attempted to revise medical malpractice limits by extending actions to multiple claims and claimants and to corporations, removing the limit on economic damages, and lowering the limit on noneconomic damages. HB 1130 would have allowed voluntary health insurance purchasing organizations to negotiate directly with health care providers at discounted fees if the negotiations did not shift risk to the providers. HB 1187 would have required health insurers who restrict access to providers to provide point of service coverage but was amended to require a study of managed care provisions, including point of service coverage, and then tabled. The failure of these bills left the reform of the small employer health insurance market as the only sign of continued progress in areas usually considered to be health insurance reform.

## **Other Legislation Related to Health Insurance**

The Legislature passed several bills affecting various other aspects of health insurance:

- Persons who contract with the Department of Corrections to provide health services for inmates of correctional institutions will be exempt from the requirements for insurers in Title 58 of the South Dakota Codified Laws, according to HB 1306.
- A law passed in 1994 concerning refund of unearned premiums on canceled life or health insurance policies was clarified by HB 1315 to state that cancellation of an authorization for automatic withdrawal of a premium from a bank account was not a request for cancellation of the policy itself.
- SB 20 made the minimum loss ratio requirement of seventy-five percent, specified in 1994 in SDCL 58-18-63 for small employer health benefit plans, applicable this year to all employer health benefit plans and added some additional instructions for meeting the requirement.
- SB 21 clarified the meaning of replacement of Medicare supplement insurance.
- Medical providers who contract with the state of South Dakota to provide services under the state health insurance plan or who contract with a

licensed health maintenance organization or a licensed health insurer to provide medical services are not required to be licensed under Chapter 58-41, Health Maintenance Organizations, according to HB 1309.

## **Nursing Home Moratorium**

An important piece of legislation, SB 208, with ramifications for provision of long-term care for South Dakotans in the future, was considered by the 1995 Legislature. Testimony showed the need for nursing home beds in outlying areas of the state and outlined the efforts of the Departments of Social Services and Health to address needs with less expensive alternatives, such as home health care and assisted living. After careful consideration, the Legislature continued the moratorium on new nursing home beds until June 30, 2000.

The bill also required the Departments of Social Services and Health to report on options for reallocating existing beds. The report is to look at the possibilities of placing voluntarily decertified or unlicensed beds in a pool for redistribution and transferring existing beds for a consideration. The deadline set for the report is November 1, 1995, and the report is to be submitted to the Governor and the Legislature.

Areas of the state most in need of nursing home beds include the Indian reservations. The problems faced by the reservations and the state are described in detail in Issue Memorandum 95-03, "Nursing Home and Alternative Services Provided to Elderly Native Americans," by Jeff Bostic, Fiscal Analyst for the Legislative Research Council.

## **Rural Health**

The availability of health care in rural areas of the state was enhanced by several bills affecting midlevel practitioners. Senate Bill 32 authorized the licensing of clinical nurse specialists, an advanced practice classification of the profession of nursing. Nurse practitioners and nurse midwives will no longer be certified under South Dakota laws, but will be licensed, as provided in SB 37, making their services more easily reimbursable under Medicare and Medicaid. Midlevel practitioners may now prescribe Schedule II controlled drugs or substances; House Bill 1195 grants this privilege to physician assistants, nurse practitioners, and nurse midwives. House Bill 1145 revised the requirements for supervision of physician assistants and nurse practitioners to extend the means of communication between the midlevel practitioners and their supervising physicians to all forms of telecommunications.

The Legislature continued its appropriations in support of rural health care in HBs 1059, 1057, and 1058. Family practice residency programs at the University of South Dakota School of Medicine received \$744,710; the physician assistant program at the University of South Dakota School of Medicine and the nurse practitioner program at South Dakota State University College of Nursing received \$44,000; and emergency medical services funded through the Department of Health received \$250,000, respectively.

### **Health Professions**

A number of bills affected the practice of health care professionals. House Bill 1167 allowed physicians, dentists, and podiatrists to use laser surgery and ionizing radiation in their practices. Nonresident physicians and osteopaths who provide consultation or health care services through electronic

means to South Dakota residents under a contract with a provider, clinic, or hospital in this state will have to be licensed in South Dakota, according to SB 116. Podiatric medicine was given a new definition and a one-year approved residency was required of new graduates by HB 1134.

Professions allied closely to health care were the subject of bills during the 1995 session. Psychologists have a new definition of "psychology" after SB 91 was passed. Clinical social work was defined in SB 90. Marriage and family therapists will be licensed under the provisions of HB 1060, which placed the profession under the Board of Counselor Examiners.

### **Mental Health**

Commitment procedures and treatment of mentally ill persons received the attention of the Legislature in several short bills. To make it easier for counties to fill appointments to boards of mental illness, HB 1205 allowed persons appointed by boards of county commissioners to serve more than one three-year term, but no more than two consecutive terms. To make it easier to conduct an evaluation of mental health in an emergency, SB 24 allowed the chair of a board of mental illness to designate any qualified mental health professional to evaluate the person, rather than first giving the community mental health center the opportunity to accept or decline to perform the evaluation.

In a further effort to clearly define the term "qualified mental health professional," SB 89 established in the practice act of licensed professional counselors a certification for licensed professional counselor - mental health, specifying the qualifications. The bill also amended the definition of qualified

mental health professional to require counselors who desire that designation to be certified as a licensed professional counselor - mental health. For those individuals seeking designation as a qualified mental health professional, SB 92 defined a mental health setting and the clinical supervision that is required for the competency-based designation.

To make it easier to conduct a mental evaluation in an emergency outside regular business hours, HB 1100 eliminated the requirement that copies of the petition and notice of hearing be certified. House Bill 191 required that a person who is taken into custody be notified that the person is responsible for all costs of commitment and treatment and that the county may place a lien to recover the costs on the person's property. In addition to the information already required to be provided before a mental health hearing, SB 192 required information on any arrests for criminal behavior caused by the person's mental illness and a review of the person's previous behavior that led to involuntary commitment or treatment which is similar to the person's present behavior.

Senate Bill 23 specified the commitment options available to a county board of mental illness. A person could be committed to the Human Services Center, to a Veterans Administration hospital, or to a private facility if the facility agreed to accept the commitment and not hold the county responsible for costs of treatment. Senate Bill 25 allowed mental health facilities to deny admission to a mentally ill person if the person's medical needs were beyond the treatment capabilities of the facility. Senate Bill 22 authorized transfer of a commitment from the Human Services Center to a community-based mental health program

operated by the state if the commitment was mutually agreeable to the facilities.

Guidelines for the use of psychotropic drugs were established by SB 184. House Bill 1166 repealed the requirement that a prescription for psychotropic medication written by a psychiatrist be concurred in by a consulting physician.

### **Pharmacies and Controlled Substances**

Two bills, SB 3 and SB 4, which were introduced at the request of the Interim Committee on Discriminatory Drug Pricing, generated packed committee rooms and lively debate, but they ultimately failed to pass the Legislature.

Senate Bill 3 attempted to eliminate discriminatory pricing by drug manufacturers that pharmacists say is driving local pharmacies out of business. Testimony from pharmacists indicated that drug manufacturers favor institutions such as hospitals and nursing homes and large mail order distributors of drugs with discounts that are unavailable to retail pharmacists. The legislative history of this bill records hearings in the Senate and House Health and Human Services Committees, numerous amendments, passage in the Senate, parliamentary maneuvering, and final defeat in the House.

The fate of SB 4, a bill designed to license out-of-state pharmacies that serve clients in South Dakota, was less dramatic. After testimony demonstrated the difficulty of forcing out-of-state pharmacies to comply with South Dakota's laws governing pharmacies, the bill was deferred to the forty-first day by the Senate Health and Human Services Committee.

When it passed HB 1051, the Legislature added ephedrine to the list of controlled substances in Schedule III and added persons who prescribe controlled substances to the list of persons who are required to be registered with the Department of Health.

### **Gross Receipts Tax on Health Care Providers**

The large issue of property tax relief touched the area of health care when the passage of HB 1350 placed a four percent gross receipts tax on the services of medical providers. Medical services had remained one of the few areas left untaxed until HB 1350 passed. The bill was amended by another bill, HB 1289. Both bills were eventually signed by the Governor.

House Bill 1163 was subsequently passed. That bill delayed the effective date of HB 1350 and established a special election at which voters would be asked to decide between an increase in sales, use, and excise taxes or the gross receipts tax on medical services. The Governor asked for an advisory opinion from the Supreme Court on the constitutionality of HB 1163. The Supreme Court, in Opinion #19106 filed

March 17, 1995, advised that “those portions of House Bill 1163 which would result in a tax rate increase if approved by a vote of the electorate would be unconstitutional.” The Governor then vetoed HB 1163 and suggested that the Legislature repeal the medical provider tax.

An effort to subject health care property to property tax in HB 1228 failed, and on the last day of the legislative session the Legislature passed HB 1358, which repealed both HB 1350 and HB 1289.

### **Conclusion**

While the burning issues of health care reform that fired the Legislature in previous years were for the most part lacking in the 1995 session, South Dakota was very busy considering many important aspects of the subject. Small employer health insurance was revised by a major bill, the nursing home moratorium was extended, availability of rural health care was promoted, advances were made in provisions for the health professions, mental health issues were addressed, and a number of issues regarding health insurance were legislated. The embers of change in health care are still alive in South Dakota.

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**This issue memorandum was written by Rosemary Quigley, Administrative Rules Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

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