



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0356

HOUSE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1051 - 01/15/2004**

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

1 FOR AN ACT ENTITLED, An Act to revise the requirements for utilization review and  
2 grievance procedures.

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

4 Section 1. That § 58-17C-94 be amended to read as follows:

5 58-17C-94. With respect to a voluntary review of a first level review decision made pursuant  
6 to §§ 58-17C-83 to 58-17C-86, inclusive, a health carrier shall appoint a review panel to review  
7 the request. In conducting the review, the review panel shall take into consideration all  
8 comments, documents, records, and other information regarding the request for benefits  
9 submitted by the covered person or the covered person's authorized representative pursuant to  
10 § 58-17C-93, without regard to whether the information was submitted or considered in  
11 reaching the first level review decision. The decision of the panel is legally binding on the health  
12 carrier.

13 Except for an individual who was involved with the first level review decision who may be  
14 a member of the panel or appear before the panel to present information or answer questions,  
15 a majority of the panel shall be comprised of individuals who were not involved ~~in the~~ in the



1 first level review decision made pursuant to §§ 58-17C-83 to 58-17C-86, inclusive.

2 The health carrier shall ensure that a majority of the individuals conducting the additional  
3 voluntary review of the first level review decision made pursuant to §§ 58-17C-83 to  
4 58-17C-86, inclusive, are health care professionals who have appropriate expertise. If a  
5 reviewing health care professional without the expertise required by this section is not  
6 reasonably available and there has been a denial of a health care service, the reviewing health  
7 care professional ~~may not~~ is only ineligible to review decisions if the professional meets both  
8 of the following criteria:

- 9 (1) ~~Be a~~ The professional is a provider in the covered person's health benefit plan; and  
10 (2) ~~Have a~~ The professional has financial interest in the outcome of the review.

11 Section 2. That § 58-17C-100 be amended to read as follows:

12 58-17C-100. In an expedited review that is not an initial determination for benefits, all  
13 necessary information, including the health carrier's decision, shall be transmitted between the  
14 health carrier and the covered person or, if applicable, the covered person's authorized  
15 representative by telephone, facsimile, or the most expeditious method available.

16 Section 3. That § 58-17C-101 be amended to read as follows:

17 58-17C-101. An expedited review decision, that is not an initial determination for benefits,  
18 shall be made and the covered person or, if applicable, the covered person's authorized  
19 representative shall be notified of the decision in accordance with § 58-17C-102 as  
20 expeditiously as the covered person's medical condition requires, but in no event more than  
21 seventy-two hours after the date of receipt of the request for the expedited review. If the  
22 expedited review is of a grievance involving an adverse determination with respect to a  
23 concurrent review urgent care request, the service shall be continued without liability to the  
24 covered person until the covered person has been notified of the determination.

1 For purposes of calculating the time periods within which a decision is required to be made  
2 under this section, the time period within which the decision is required to be made shall begin  
3 on the date the request is filed with the health carrier in accordance with the health carrier's  
4 procedures established pursuant to § 58-17C-82 for filing a request without regard to whether  
5 all of the information necessary to make the determination accompanies the filing.

6 Section 4. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as  
7 follows:

8 The provisions of §§ 58-17C-40 to 58-17C-102, inclusive, do not apply to any medicare  
9 supplement policies or certificates subject to the provisions of chapter 58-17A.

10 Section 5. That § 58-17C-3 be amended to read as follows:

11 58-17C-3. Nothing in §§ ~~58-17C-1 to 58-17C-3, inclusive,~~ § 58-17C-2 applies to dental  
12 only, vision only, accident only, school accident, travel, or specified disease plans or plans that  
13 primarily provide a fixed daily, fixed occurrence, or fixed per procedure benefit without regard  
14 to expenses incurred.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

455J0383

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1054** - 01/16/2004

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney  
General

1 FOR AN ACT ENTITLED, An Act to revise the allowable share provision of the escrow fund  
2 for tobacco litigation.

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

4 Section 1. That § 10-50B-8 be amended to read as follows:

5 10-50B-8. A tobacco product manufacturer that places funds into escrow pursuant to  
6 subdivision 10-50B-7(2) shall receive the interest or other appreciation on such funds as earned.

7 Such funds themselves shall be released from escrow only under the following circumstances:

8 (1) To pay a judgment or settlement on any released claim brought against such tobacco  
9 product manufacturer by the state or any releasing party located or residing in the  
10 state. Funds shall be released from escrow under this subdivision in the order in  
11 which they were placed into escrow and only to the extent and at the time necessary  
12 to make payments required under such judgment or settlement;

13 (2) To the extent that a tobacco product manufacturer establishes that the amount it was  
14 required to place into escrow on account of units sold in the state in a particular year  
15 was greater than ~~the state's allocable share of the total payments that such~~



1 ~~manufacturer would have been required to make in that year under the Master~~  
2 ~~Settlement Agreement payments, as determined pursuant to section IX (i) of that~~  
3 ~~agreement including after final determination of all adjustments, that such~~  
4 ~~manufacturer would have been required to make on account of such units sold had~~  
5 ~~it been a participating manufacturer, as such payments are determined pursuant to~~  
6 ~~section IX(i)(2) of the Master Settlement Agreement and before any of the~~  
7 ~~adjustments or offsets described in section IX(i)(3) of the Master Settlement~~  
8 ~~Agreement other than the inflation adjustment; the excess shall be released from~~  
9 ~~escrow and revert back to such tobacco product manufacturer; or~~

- 10 (3) To the extent not released from escrow under subdivision (1) or (2) of this section,  
11 funds shall be released from escrow and revert back to such tobacco product  
12 manufacturer twenty-five years after the date on which they were placed into escrow.

13 Section 2. That chapter 10-50B be amended by adding thereto a NEW SECTION to read as  
14 follows:

15 If any portion of the amendment to subdivision 10-50B-8(2) made by this Act is held by a  
16 court of competent jurisdiction to be unconstitutional, then subdivision 10-50B-8(2) shall be  
17 deemed to be repealed in its entirety. If that repeal of subdivision 10-50B-8(2) is thereafter held  
18 by a court of competent jurisdiction to render § 10-50B-8 unconstitutional, then this Act shall  
19 be deemed repealed, and subdivision 10-50B-8(2) restored as if no such amendment had been  
20 made. Neither any holding of unconstitutionality nor the repeal of subdivision 10-50B-8(2)  
21 affects, impairs, or invalidates any other portion of § 10-50B-8, or the application of such  
22 section to any other person or circumstance, and such remaining portions of § 10-50B-8 shall  
23 at all times continue in full force and effect.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0400

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

**HB 1079** - 01/16/2004

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding preliminary hearings  
2 for parole violators.

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

4 Section 1. That § 24-15-23 be amended to read as follows:

5 24-15-23. ~~Within~~ Subject to the provisions of sections 2 and 3 of this Act, within ten  
6 working days of the arrest of the parolee, a preliminary hearing shall be held. The preliminary  
7 hearing shall be held before an independent hearing officer to determine if there is probable  
8 cause to believe that the parolee has violated the terms and conditions of the parolee's parole  
9 status. The parolee has the right to waive this preliminary hearing at any time after the order for  
10 arrest has been issued by the executive director of the Board of Pardons and Paroles. If probable  
11 cause is found to exist, the parolee is to be returned to the penitentiary, there to be held, for a  
12 hearing to be held before the Board of Pardons and Paroles to determine whether the parole  
13 should be revoked. If the parolee wishes to admit to an alleged violation of conditions of parole,  
14 the parolee may waive a personal appearance at the revocation hearing with the board.

15 Section 2. That chapter 24-15 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 A preliminary hearing as provided for in § 24-15-23 is not required if:

- 3 (1) The parolee is under arrest and being held on an order issued by a jurisdiction other  
4 than the Board of Pardons and Paroles;
- 5 (2) The parolee left the state or other approved jurisdiction without authorization and  
6 was apprehended outside of that jurisdiction; or
- 7 (3) The parolee was convicted of a felony or misdemeanor in a South Dakota court or a  
8 court of another state or a federal court.

9 Section 3. That chapter 24-15 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 If a preliminary hearing under § 24-15-23 is required and a parolee fails to receive a  
12 preliminary hearing prior to the parolee's return to a Department of Corrections facility, the  
13 parolee shall receive a preliminary hearing within ten working days of the parolee's return to a  
14 Department of Corrections facility.