

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0300

HOUSE BILL NO. 1052

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

1 FOR AN ACT ENTITLED, An Act to revise certain requirements for third party administrators
2 and pharmacy benefits managers.

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

4 Section 1. That § 58-29D-18 be amended to read as follows:

5 58-29D-18. An administrator may not enter into any agreement or understanding with an
6 insurer in which the effect is to make the amount of the administrator's commissions, fees, or
7 charges contingent upon savings effected in the adjustment, settlement, and payment of losses
8 covered by the insurer's obligations. This section may not prevent the compensation of an
9 administrator from being based on premiums or charges collected or the number of claims paid
10 or processed. This section does not prohibit an administrator from receiving performance-based
11 compensation for providing hospital and other auditing services.

12 Section 2. That § 58-29D-22 be amended to read as follows:

13 58-29D-22. An administrator shall apply to the director upon a form to be furnished by the
14 director. The application shall include or be accompanied by the following information and
15 documents:



- 1 (1) All basic organizational documents of the administrator, including any articles of
2 incorporation, articles of association, partnership agreement, trade name certificate,
3 trust agreement, shareholder agreement, and other applicable documents, and all
4 amendments to such documents;
- 5 (2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of
6 the administrator;
- 7 (3) The names, addresses, official positions, and professional qualifications of the
8 individuals who are responsible for the conduct of affairs of the administrator;
9 including all members of the board of directors, board of trustees, executive
10 committee, or other governing board or committee; the principal officers in the case
11 of a corporation or the partners or members in the case of a partnership or
12 association; shareholders holding directly or indirectly ten percent or more of the
13 voting securities of the administrator; and any other person who exercises control or
14 influence over the affairs of the administrator;
- 15 (4) Annual financial statements or reports for the two most recent years which prove that
16 the applicant is solvent and such information as the director may require in order to
17 review the current financial condition of the applicant;
- 18 (5) A statement describing the business plan including information on staffing levels and
19 activities proposed in this state and nationwide. The plan shall provide details setting
20 forth the administrator's capability for providing a sufficient number of experienced
21 and qualified personnel in the areas of claims processing, record keeping, and
22 underwriting;
- 23 (6) If the applicant will be managing the solicitation of new or renewal business, proof
24 that it employs or has contracted with an insurance producer licensed by this state for

1 solicitation and taking of applications. Any applicant shall provide proof that it has
2 a license as a life and health insurance producer in this state; and

3 (7) Such other pertinent information as may be required by the director.

4 Any material change in the above information shall be filed with the director within thirty
5 days. A filing fee of five hundred dollars shall accompany the application.

6 Section 3. That § 58-29D-31 be amended to read as follows:

7 58-29D-31. The application or annual renewal shall be denied and the license or registration
8 of an administrator shall be suspended or revoked if the director finds that the administrator or
9 applicant:

- 10 (1) Is in an unsound financial condition;
- 11 (2) Is using such methods or practices in the conduct of its business so as to render its
12 further transaction of business in this state hazardous or injurious to insured persons
13 or the public;
- 14 (3) Has failed to pay any judgment rendered against it in this state within sixty days after
15 the judgment has become final;
- 16 (4) Has violated any lawful rule or order of the director or any provision of the insurance
17 laws of this state;
- 18 (5) Has refused to be examined or to produce its accounts, records, and files for
19 examination, or if any of its officers has refused to give information with respect to
20 its affairs or has refused to perform any other legal obligation as to such examination,
21 if required by the director;
- 22 (6) Has, without just cause, refused to pay proper claims or perform services arising
23 under its contracts or has, without just cause, caused covered individuals to accept
24 less than the amount due them or caused covered individuals to employ attorneys or

1 bring suit against the administrator to secure full payment or settlement of such
2 claims;

3 (7) Is affiliated with or under the same general management or interlocking directorate
4 or ownership as another administrator or insurer which unlawfully transacts business
5 in this state without having a license;

6 (8) At any time fails to meet any qualification for which issuance of the certificate could
7 have been refused had such failure then existed and been known to the Division of
8 Insurance;

9 (9) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony
10 without regard to whether adjudication was withheld;

11 (10) Is under suspension or revocation in another state; or

12 (11) Has supplied false information to the director.

13 Section 4. That chapter 58-29D be amended by adding thereto a NEW SECTION to read
14 as follows:

15 If the director denies an application or annual renewal for a license or registration, the
16 director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of
17 the reason for the denial. The applicant or licensee may make a written request to the director
18 within thirty days of the date of the denial for a hearing to determine the reasonableness of the
19 director's action. A notice of hearing shall be issued within thirty days of receipt of a written
20 request.

21 The director shall suspend for not more than twelve months, or may revoke or refuse to
22 continue, any license or registration issued under this chapter after a hearing. Notice of such
23 hearing and of the charges against the licensee or registrant pursuant to § 58-29D-31 shall be
24 given at least twenty days before a hearing. Notice of hearing shall be issued within twenty days

1 of the director's suspension under § 58-29D-32 which shall include the reasons for suspension
2 and may include grounds for revocation under § 58-29D-31. Any hearing under § 58-29D-32
3 shall be held within thirty days of the date of the director's suspension.

4 Any hearing under the provisions of this section shall be held pursuant to chapter 1-26.
5 Nothing in this section or § 58-29D-31 applies to a renewal which is lapsed pursuant to § 58-
6 29D-30.

7 Section 5. That § 58-29E-2 be amended to read as follows:

8 58-29E-2. No person or entity may perform or act as a pharmacy benefits manager in this
9 state without a valid license to operate as a third party administrator pursuant to chapter 58-29D.

10 Sections 58-29D-26 and 58-29D-29 do not apply to pharmacy benefits managers.