

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0300

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1052** - 01/28/2013

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



1 documents:

2 (1) All basic organizational documents of the administrator, including any articles of
3 incorporation, articles of association, partnership agreement, trade name certificate,
4 trust agreement, shareholder agreement, and other applicable documents, and all
5 amendments to such documents;

6 (2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of
7 the administrator;

8 (3) The names, addresses, official positions, and professional qualifications of the
9 individuals who are responsible for the conduct of affairs of the administrator;
10 including all members of the board of directors, board of trustees, executive
11 committee, or other governing board or committee; the principal officers in the case
12 of a corporation or the partners or members in the case of a partnership or
13 association; shareholders holding directly or indirectly ten percent or more of the
14 voting securities of the administrator; and any other person who exercises control or
15 influence over the affairs of the administrator;

16 (4) Annual financial statements or reports for the two most recent years which prove that
17 the applicant is solvent and such information as the director may require in order to
18 review the current financial condition of the applicant;

19 (5) A statement describing the business plan including information on staffing levels and
20 activities proposed in this state and nationwide. The plan shall provide details setting
21 forth the administrator's capability for providing a sufficient number of experienced
22 and qualified personnel in the areas of claims processing, record keeping, and
23 underwriting;

24 (6) If the applicant will be managing the solicitation of new or renewal business, proof

1 that it employs or has contracted with an insurance producer licensed by this state for
2 solicitation and taking of applications. Any applicant shall provide proof that it has
3 a license as a life and health insurance producer in this state; and

4 (7) Information regarding administrative actions, criminal convictions, or guilty pleas.

5 The director may request additional information if the information provided pursuant to this
6 section is inaccurate, incomplete, or unclear. If an applicant fails to provide the requested
7 information within thirty days of the receipt of the any written request pursuant to subdivisions
8 (1) to (7), inclusive, it is grounds for denial of an application.

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

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

12 58-29D-31. The application or annual renewal shall be denied and the license or registration
13 of an administrator shall be suspended or revoked if the director finds that the administrator or
14 applicant:

- 15 (1) Is in an unsound financial condition;
- 16 (2) Is using such methods or practices in the conduct of its business so as to render its
17 further transaction of business in this state hazardous or injurious to insured persons
18 or the public;
- 19 (3) Has failed to pay any judgment rendered against it in this state within sixty days after
20 the judgment has become final;
- 21 (4) Has violated any lawful rule or order of the director or any provision of the insurance
22 laws of this state;
- 23 (5) Has refused to be examined or to produce its accounts, records, and files for
24 examination, or if any of its officers has refused to give information with respect to

1 its affairs or has refused to perform any other legal obligation as to such examination,
2 if required by the director;

3 (6) Has, without just cause, refused to pay proper claims or perform services arising
4 under its contracts or has, without just cause, caused covered individuals to accept
5 less than the amount due them or caused covered individuals to employ attorneys or
6 bring suit against the administrator to secure full payment or settlement of such
7 claims;

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

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

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

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

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

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

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

1 request.

2 The director shall suspend for not more than twelve months, or may revoke or refuse to
3 continue, any license or registration issued under this chapter after a hearing. Notice of such
4 hearing and of the charges against the licensee or registrant pursuant to § 58-29D-31 shall be
5 given at least twenty days before a hearing. Notice of hearing shall be issued within twenty days
6 of the director's suspension under § 58-29D-32 which shall include the reasons for suspension
7 and may include grounds for revocation under § 58-29D-31. Any hearing under § 58-29D-32
8 shall be held within thirty days of the date of the director's suspension.

9 Any hearing under the provisions of this section shall be held pursuant to chapter 1-26.
10 Nothing in this section or § 58-29D-31 applies to a renewal which is lapsed pursuant to § 58-
11 29D-30.

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

13 58-29E-2. No person or entity may perform or act as a pharmacy benefits manager in this
14 state without a valid license to operate as a third party administrator pursuant to chapter 58-29D.
15 Sections 58-29D-26 and 58-29D-29 do not apply to pharmacy benefits managers.