February 14, 2020
Legislative Report #4 – NAIFA

Bill Watch

HB 1005
HB 1017
HB 1018
HB 1041
HB 1057
HB 1063
HB 1064
HB 1076
HB 1090
HB 1096
HB 1101
IID 1121
HB 1136
HB 1137
HB 1141
HB 1142
HB 1169
HB 1187
HB 1193
HR 1204
HB 1211
HB 1214
HB 1235
HB 1247
HB 1275

HB 1017 An Act to provide for certain insurer corporate governance disclosure requirements.
Sponsor: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation
Summary: This bill is one of two accreditation bills introduced by the Division of Insurance. The bill, which is an NAIC model, sets out corporate governance disclosure requirements for insurers that have complex corporate structure.
NAIFA Position: Support
Status: Passed both chambers; delivered to the Governor on February 10.

HB 1018 An Act to revise certain provisions regarding life and health insurance insolvencies.
Sponsor: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation
Summary: This DOI bill updates the Life and Health Guaranty Association. Consistent with NAIC model language, the bill assesses both life and health insurance companies for long term care company insolvencies. It deviates from the NAIC model by excluding HMOs from the Association.
NAIFA Position: Support
Status: Passed both chambers; delivered to the Governor on February 10.

Introduction

- This was a busy week in committee hearings.
- Cross-over day is looming (February 27).
- We have been able to compromise on some bills and other adverse bills have been defeated during the past week.

HOUSE BILLS

HB 1005 An Act to revise certain provisions regarding the use of telehealth technologies.
Sponsor: Representative Otten (Herman) and Senator Soholt at the request of the Leverage Telehealth and Telemedicine Task Force
Summary: The purpose of this bill is to allow telehealth services to be used in emergency commitment proceedings, even if there is no prior patient-provider relationship.
NAIFA Position: Support
Status: Signed by the Governor on February 6.
HB 1041 An Act to revise provisions authorizing state employees to opt-out of the state employee health plan.
Sponsor: The Committee on Commerce and Energy at the request of the Bureau of Human Resources
Summary: Currently, the law allows state employees to opt out of the state health plan if the employee is covered by another group health plan. This bill allows opt out if the employee is covered by Medicare. It was amended in committee to add an emergency clause.
NAIFA Position: Monitor
Status: Passed House Commerce and Energy Committee as amended (13-0) on January 29; passed House of Representatives (65-1) on February 4; referred to Senate Commerce and Energy Committee.

HB 1057 An Act to prohibit certain acts against children and provide a penalty therefor
Introduced by: Representative Deutch
Summary: This bill makes it a misdemeanor for a medical professional to alter a minor’s sex, either by use of drugs or surgery. It was amended in committee to reduce the age to 16. It was amended in Senate Health and Human Services Committee to change the criminal action to a civil claim for injunctive relief.
NAIFA Position: Monitor
Status: Passed House State Affairs Committee as amended (8-5) on January 22; passed House of Representatives (46-23) on January 29; deferred to 41st legislative day in Senate Health and Human Services Committee (5-2) on February 10.

HB 1063 An Act to revise certain provisions regarding the purchase, distribution, and sale of tobacco products to persons under the age of twenty-one
Sponsor: Representative Perry
Summary: This bill amends the law to require persons to be 21 years of age to purchase tobacco. The bill follows federal guidelines. It was amended in committee to ease restrictions on retailers.
NAIFA Position: Monitor
Status: Passed House Health and Human Services Committee as amended (9-3) on January 28; passed House of Representatives (43-24) on January 30; referred to Senate Commerce and Energy Committee.

HB 1064 An Act to restrict certain vapor products
Sponsor: Representative Perry and Senator Novstrup
Summary: This bill prohibits the selling, offering for sale, giving, transporting, otherwise distributing, or possessing a flavored vapor product and makes doing so a Class 2 misdemeanor. The bill further allows flavored vapor products found at any place to be declared contraband and to be seized by the secretary of revenue or law enforcement of the secretary of the state without a warrant.
NAIFA Position: Monitor
Status: Referred to House Health and Human Services Committee.
HB 1076 An Act to require a designation on a driver license for autism spectrum disorder
Sponsor: Representative Pischke and Senator Phil Jensen
Summary: This bill adds a new law stating that upon the written request of the licensee, the department shall issue a driver's license bearing a graphic or written designation for autism spectrum disorder that may impede communication with a law enforcement officer.
NAIFA Position: Monitor
Status: Deferred to 41st Legislative Day (11-1) in House Health and Human Services on January 30.

HB 1090 An Act to make an appropriation to evaluate the feasibility of the use of telehealth services within the criminal justice system and to declare an emergency
Sponsor: The Committee on Judiciary at the request of the Chief Justice
Summary: This bill appropriates $418,000 of fund expenditure authority from donations and other external sources to the Unified Judicial System for the purposes of evaluating the feasibility of the use of telehealth services within the criminal justice system, including the use of telehealth for mental health assessments and services.
NAIFA Position: Monitor
Status: Passed Joint Appropriations Committee (17-0) on February 13.

HB 1096 Title Amendment An Act to prohibit commercial surrogacy contracts and provide a penalty for facilitating a commercial surrogacy, and establish an interim committee to evaluate surrogacy in the state.
Sponsor: Representative Hansen and Senator Novstrup
Summary: This bill prohibits any broker to knowingly engage in, advertise services for, or offer payments of money or other consideration for, profit from, or solicit a woman to assist or participate in commercial surrogacy. Said broker is guilty of a Class 1 misdemeanor. A new section was added on the House floor to establish an interim legislative committee to study surrogacy. The study is under the supervision of the Executive Board and LRC and staffed and funded as an interim legislative committee.
NAIFA Position: Monitor
Status: Passed House Judiciary Committee as amended (11-1) on January 29; passed House of Representatives as amended (46-20) on February 6; referred to Senate Health and Human Services Committee.

HB 1101 An Act to provide for the reinstatement of a driver license under certain conditions
Sponsor: Representative Kevin Jensen and Senator Wismer
Summary: This bill allows the reinstatement of a driver license that has been suspended due to the individual not having proof of financial responsibility if they 1) Provide proof of having established one of the forms of financial responsibility and 2) Pay any costs, penalties, assessments, surcharges, and fines imposed by reason of the violation.
NAIFA Position: Monitor
Status: Scheduled for hearing in House Judiciary Committee on February 10; deferred

HB 1121 An Act to establish immunity from liability for the inherent risk of camping
Sponsor: Representative Goodwin and Senator Phil Jensen
Summary: This bill adds a new law to provide immunity to a private campground, an owner or operator of a private campground, and any employee or officer of a private campground or private campground owner for acts or omissions related to camping at a private campground if a person is injured or killed, or property is damaged as a result of an inherent risk of camping. The bill does provide a few exceptions.

NAIFA Position: Monitor

Status: Referred to House Judiciary Committee.

**HB 1136 An Act to provide for the licensure and regulation of practitioners of acupuncture and Oriental medicine and to establish the acupuncture regulation fund**

Sponsor: Representative St. John and Senator Foster

Summary: This bill creates new law to regulate the practice of acupuncture and Oriental medicine by creating a board and a fund.

NAIFA Position: Monitor

Status: Scheduled for hearing in House Health and Human Services Committee on February 18.

**HB 1137 An Act to require the provision of medical billing information and a settlement offer for unpaid medical bills**

Sponsor: Representative Pischke

Summary: This bill provides that before a health care provider initiates legal action against a patient for unpaid medical bills, the health care provider shall submit to the patient a written offer of settlement in an amount not exceeding one hundred and twenty percent of the Medicare fee schedule for the services rendered. This offer must be open for sixty days.

NAIFA Position: Monitor

Status: Referred to House Health and Human Services Committee.

**HB 1141 An Act to require a feasibility study and actuarial analysis on long-term care services and supports**

Sponsor: Representative Cwach and Senator Wismer

Summary: This bill creates new sections of law to state that the Dept. of Labor and Regulation shall contract for an independent feasibility study and actuarial model of public, private, and public-private hybrid options to help persons prepare for, access, and afford the long-term care services and supports they need.

NAIFA Position: Monitor

Status: Scheduled for hearing in House Health and Human Services Committee on February 18.

**HB 1142 An Act to include post-traumatic stress disorder as a compensable injury for purposes of workers' compensation**

Sponsor: Representative Cwach and Senator Nesiba

Summary: This bill does exactly what the title indicates.

NAIFA Position: Monitor

Status: Scheduled for hearing in House Health and Human Services Committee on February 18.

**HB 1169 An Act to prohibit the use of certain electronic devices while driving**

Sponsor: Representative Barthel and Senator Soholt
Summary: This bill would prohibit the use of cell phones while driving. Two minor amendments were adopted in committee.

NAIFA Position: Monitor

Status: Passed House Transportation Committee as amended (10-1) on February 13.

HB 1187 An Act to revise certain health care programs and make an appropriation therefor
Sponsor: Representative Karr
Summary: This bill appropriates one dollar or so much thereof as may be necessary to the state for the purpose of revisiting certain health care programs and to promote efficiency in state government.
NAIFA Position: Monitor
Status: Referred to House Appropriations Committee.

HB 1193 An Act to accommodate legislation enhancing health and human services
Sponsor: Representative Haugaard
Summary: This is a vehicle bill.
NAIFA Position: Monitor
Status: Not yet assigned to committee.

HB 1204 An Act to lower the total amount of tax credits that may be claimed on annual premium tax returns
Introduced by: Representative Willadsen
Summary: This bill decreases the amount of tax credits a company can claim on its annual premium tax return from two million dollars to five hundred thousand dollars, starting in fiscal year 2021.
NAIFA Position: Monitor
Status: Scheduled for hearing in House Education Committee on February 19.

HB 1211 An Act to change the payment process for forensic medical examinations
Sponsor: Representative Reed and Senator Smith
Summary: This bill amends law to allow a physician, hospital, or clinic who performs a forensic medical examination to request authorization from the victim of the alleged rape or sex offense for payment of the examination from the victim’s insurer, unless the examination is for an unreported sexual assault.
NAIFA Position: Monitor
Status: Scheduled for hearing in Health and Human Services Committee on February 6; hearing deferred.

HB 1214 An Act to revise provisions regarding autism spectrum disorder
Sponsors: Representative Pischke
Summary: This bill adds to South Dakota law the definition of autism spectrum disorder contained in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, 2013.
NAIFA Position: Oppose
Status: Deferred to 41st legislative day (9-2) in House Health and Human Services Committee on February 6.
HB 1235 An Act to revise provisions regarding immunizations
Sponsors: Representative Qualm
Summary: This bill provides that a child entering public or nonpublic school cannot be required to receive any immunizations for enrollment or entry. The Department of Health may recommend but not require immunizations for school entry.
NAIFA Position: Monitor
Status: Referred to House Health and Human Services Committee.

HB 1247 An Act to create the medical reinsurance program and to make an appropriation therefor.
Sponsor: Representative Cwach
Summary: This bill establishes a medical reinsurance program within the Division of Insurance. An insurer may receive a payment from the fund if the insurer’s cost of claims for a reinsurance eligible individual’s covered benefits in a calendar year exceed the “attachment point.” The program is funded by assessments on insurers.
NAIFA Position: Oppose
Status: Not yet assigned to committee.

HB 1275 An Act to revise provisions regarding a judgment not collected from an underinsured motorist.
Sponsors: Representative Ring
Summary: This bill provides that the total amount paid to an insured by underinsured motorist coverage may not exceed the total judgment awarded or settlement recovered.
NAIFA Position: Monitor
Status: Referred to House Judiciary Committee.

SENATE BILLS

SB 8 An Act to revise certain provisions regarding insurance holding companies.
Sponsor: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation
Summary: This is the second of the DOI’s accreditation bills. This NAIC model allows South Dakota’s DOI to participate in the supervisory college that regulates companies that are internationally active.
NAIFA Position: Support
Status: Passed Senate Commerce and Energy Committee (6-0 consent) on January 21; passed Senate (34-0) on January 23; Passed house Commerce and Energy Committee (13-0 consent) on February 12.

SB 11 An Act to revise certain provisions regarding third party insurance plan administrators.
Sponsor: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation
Summary: This DOI bill eliminates the requirement that TPAs must have 2 years of performance experience before they can be licensed in South Dakota. The TPA must submit audited financial statements to the DOI, and if the company is solvent, it can obtain a license.
NAIFA Position: Support
Status: Passed Senate Commerce and Energy Committee (6-0 consent) on January 21; passed Senate (34-0) on January 22; passed House Commerce and Energy Committee (12-0) on February 7; passed House of Representatives (68-0) on February 10.

**SB 106 An Act to accommodate legislation enhancing health care**
Sponsor: Senator Bolin and Representative Chase
Summary: This is a vehicle bill.
NAIFA Position: Monitor
Status: Scheduled for hearing in Senate State Affairs Committee on February 7; deferred.

**SB 108 An Act to revise the time period allowable for certain covenants not to compete.**
Introduced by: Brock Greenfield
Summary: This bill reduces the time-frame for a covenant not to compete from two years to one year from the date of termination. It applies to employment contracts and contracts of captive insurance agents.
NAIFA Position: Monitor
Status: Tabled in Senate Commerce and Energy Committee (5-1) on February 11.

**SB 109 An Act to provide protections for health care decisions governed by conscience.**
Introduced by: Senator Stalzer
Summary: This bill creates new law to state that a health care provider has the right not to participate in any health care service that violates the provider’s conscience and that the health care provider may not be discriminated against if the provider exercises this right. The bill also provides that a health care payer has the right not to pay for health care service that violate the payer’s conscience and that the health care payer may not be discriminated against if the payer exercises this right.
NAIFA Position: Monitor
Status: Referred to Senate Health and Human Services Committee.

**SB 119 An Act to revise certain provisions regarding private placement insurance**
Sponsor: Senator Schoenbeck and Representative Diedrich
Summary: This bill is necessary to enable South Dakota to continue to attract large trusts to the state. It amends the law to allow the policyholder’s designee, rather than just the policyholder, to provide consent to distribute like-kind assets that are in a separate account to the claimant.
NAIFA Position: Monitor
Status: Passed Senate Commerce and Energy Committee (5-1) on February 11; passed Senate 20-14 on February 12.

**SB 129 An Act to prohibit the cancellation or nonrenewal of a health insurance policy for a preexisting condition**
Sponsor: Senator Heinert
Summary: This bill provides that a health insurance policy may not be cancelled, nor may renewal be refused, solely based on a preexisting condition of the injured person.
NAIFA Position: Monitor
Status: Tabled in Senate Commerce and Energy Committee (4-3) on February 6.
SB 130 An Act to revise certain health programs and make an appropriation therefor
Sponsor: Senator Wiik and Maher
Summary: This bill appropriates from the general fund one dollar or so much thereof as may be necessary, to the Appropriations, for purposes of enhancing health care programs in South Dakota and to promote efficiency in this state government.
NAIFA Position: Monitor
Status: Referred to Senate Appropriations Committee.

SR 132 An Act to accommodate legislation enhancing health care
Sponsor: Senator Maher and Wiik
Summary: This is a vehicle bill.
NAIFA Position: Monitor
Status: Referred to Senate Appropriations Committee.

SB 148 An Act to adopt the Uniform Power of Attorney Act
Sponsor: Senator Partridge and Curd and Representative Johns and Diedrich
Summary: This bill does what the title indicates.
NAIFA Position: Monitor
Status: Referred to Senate Judiciary Committee.

SB 155 An Act to provide for step therapy protocol regarding certain prescription drugs
Sponsor: Senator Langer
Summary: This bill restricts the ability of health plans and utilization review organizations to use a step therapy protocol. The model bill that was introduced was houghoused in committee and now is the Iowa language.
NAIFA Position: Neutral as amended.
Status: Passed Senate Health and Human Resources Committee (8-0) on February 12.

SB 181 An Act to revise provisions regarding health benefit plans
Sponsor: Senator Blare
Summary: This bill changes the definition of a “health benefit plan” to include plans that have a duration of 12 months or more. Current law is 6 months.
NAIFA Position: Support
Status: Passed Senate Commerce and Energy Committee as amended (6-0 consent) on February 13.

Respectfully submitted,

Darla Pollman Rogers, Lobbyist