



SIoux FALLS AREA
CHAMBER OF COMMERCE
Progress is everyone's business

ISSUE BRIEF:

Any Willing Provider

September 2014

Background

Health insurance companies frequently offer health benefit plans in which they maintain a network of providers including doctors and other licensed health care professionals, clinics and hospitals. In order to receive maximum coverage under these plans, members must receive medical services from in-network providers. An insured member may choose to use a provider outside of the network; however, the costs are higher. Insurance companies often negotiate for lower rates with in-network providers in return for a higher patient volume guarantee.

Any willing provider (AWP) laws require a health insurance company to accept any qualified provider who is willing to accept its terms and conditions. Though these laws do not require health insurance companies to contract with all providers, they do require health insurance companies to explicitly state evaluation criteria and ensure “due process” for providers who wish to contract with them.

South Dakota does not currently have a comprehensive AWP law; however, the state does have a freedom of choice requirement for pharmacy services (SDCL [58-18-37](#)). The law states that group health insurance policies may not refuse to accept licensed pharmacies/pharmacists as participating providers if they agree to the same terms and conditions offered to other providers of pharmacy services under the policy.

The South Dakota Legislature has discussed AWP legislation several times throughout the years. During the 2013 session, HB 1142 would have opened health insurance networks to any willing provider. Though it passed out of the House of Representatives, it failed in the Senate.

Following the bill's defeat in 2013, three South Dakota doctors led the effort to collect at least 15,855 valid signatures needed to place the issue on the 2014 General Election ballot. Nearly twice this number was collected. The ballot issue has since been titled “Initiated Measure 17” (IM 17).

IM 17 would determine who is entitled to be included within the list of providers. According to the Attorney's General statement, the measure would require “that these insurers list all health care providers who are willing, qualified and meet the conditions for participation established by the insurer.”

“The measure does not apply to all health insurers, nor to certain kinds of insurance and plans including those involving specified disease, indemnity, accident only, dental, vision, Medicare supplement, long-term care or disability income and workers' compensation.”

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Wyoming is the only state surrounding South Dakota that has comprehensive AWP laws in place that are similar to what would be implemented under IM 17.

At their June 2014 Board Meeting, the South Dakota Chamber of Commerce took a position to oppose AWP legislation and will be leading the effort to defeat IM 17. During the South Dakota State Legislature's consideration of HB 1142 in February 2013, the Sioux Falls Area Chamber of Commerce Board of Directors agreed to adopt a position to oppose passage of this legislation.

Summary of State Laws

A matrix summarizing the current status of AWP laws and legislation is attached. There are many variations of AWP to consider and hopefully this matrix helps to summarize which states have some form of AWP. As you review the matrix, we would consider IM 17 to be a "comprehensive" implementation of AWP in South Dakota.

Observations on the data include:

- 17 states do not have, have not had and are not currently considering AWP laws (bold red type)
- 11 states have rather "comprehensive" AWP laws
 - None recently enacted
- 14 states have AWP laws that apply to pharmacy services
- 3 states repealed their AWP laws (pink highlight)
- 2 states have had courts preempt them per ERISA (green highlight)
- 5 states are considering some version of AWP laws (blue highlight)

Proponents of Any Willing Provider laws have outlined the following rationale for passage of IM 17:

- AWP gives patients a choice of where they are treated and which doctor they may use.
- AWP allows the insured to retain their doctor without having to pay higher out-of-network costs if an employer decides to switch insurance companies.
- AWP provides healthier competition; conversely, large hospital systems who are also involved in the insurance business eliminate competition.
- In 2012, proponents of AWP obtained a study from University of South Dakota professor Michael Allgrunn. Allgrunn's study evaluated the potential of AWP if it was adopted in South Dakota. The study concluded that AWP would lead to minimal or no increase in health insurance costs in South Dakota.
 - Allgrunn admitted, however, that his study did not take into account any potential impacts from the Affordable Care Act.

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Opponents of Any Willing Provider laws have outlined the following reasons to reject IM 17:

- Insurance rates would escalate under AWP implementation, which may also lead to a reduced enrollment in health plans as insurance companies lose the benefits of volume in negotiating lower rates with providers.
 - According to a study found in *The Journal of Private Enterprise*, the effect of healthcare mandates increases premiums by 24 percent with AWP mandates contributing to this.
 - The Federal Trade Commission recently released a letter warning of the serious risks of AWP (or “Freedom of Choice”) laws. In particular, the FTC warned that removing the benefits of limited provider networks could cause cost increases.
- Health insurance companies, not AWP, lower costs by providing coordinated care among provider groups.
- AWP is unnecessary--those who are willing to pay more for additional provider choices already have that option.
- The Affordable Care Act (ACA) is a huge collection of federal statutes and regulations that directly impact health insurance and healthcare generally. The ACA changes daily, with new statutory and regulatory updates creating new issues each time. In this environment of legal uncertainty at the federal level, it would be irresponsible to adopt a state law with an impact as sweeping as AWP.
 - The ACA sets out a benchmark health insurance model for every state. If an individual state adopts a new insurance mandate that was not part of the prior benchmark, that state must cover any increase in cost caused by that new mandate. AWP would qualify as a new mandate and South Dakota’s state budget would have to cover any rise in health insurance or healthcare costs caused by AWP.
 - Only a minority of states have adopted AWP laws like the one proposed by IM 17. All of those AWP laws were adopted in those states before the ACA was passed. No state has adopted a new AWP law of any kind since the ACA became law.

Note: Detailing “Proponents” and “Opponents” rationale is designed to provide the reader with an understanding of the opinions and talking points from each perspective. They are not intended to reflect any position of the Sioux Falls Area Chamber of Commerce.

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Any Willing Provider - Summary of States

STATE	COMPREHENSIVE	PHARM	CHIRO	DENTAL	RESTRICTED	SPECIAL	PREEMPT / REPEALED	PENDING	COMMENTS
ALABAMA		X			X				Applies to Medicaid services only
ALASKA									
ARIZONA									
ARKANSAS	X								
CALIFORNIA									
COLORADO									
CONNECTICUT		X							
DELAWARE		X							
FLORIDA							X		In 2000
GEORGIA	X								
HAWAII									
IDAHO	X								
ILLINOIS	X	X							
INDIANA	X								
IOWA									
KANSAS									
KENTUCKY			X		X				Provider must be in geographic region of plan
LOUISIANA					X		X		Only with LSU Health Sciences Center. ERISA Preemption
MAINE		X							
MARYLAND									
MASSACHUSETTS		X							
MASSACHUSETTS								X	Mental Health or Sub Abuse
MICHIGAN									
MINNESOTA						X	X		Fertility, Fam Planning, testing STDs/HIV/AIDS - 2012
MISSISSIPPI		X		X					
MISSISSIPPI								X	AWP in geographic region covered by plan
MISSOURI	X								
MONTANA									
NEBRASKA									
NEVADA									
NEW HAMPSHIRE		X							
NEW HAMPSHIRE								X	Comprehensive AWP
NEW JERSEY		X							
NEW MEXICO									
NEW YORK									
NORTH CAROLINA		X							
NORTH DAKOTA		X							
OHIO					X				With intellectual disability in residential care can have AWP
OKLAHOMA									
OREGON									
PENNSYLVANIA								X	Comprehensive AWP
RHODE ISLAND									
SOUTH CAROLINA							X		In 1997
SOUTH DAKOTA		X							
SOUTH DAKOTA								X	Comprehensive AWP - Statewide Initiated Measure
TENNESSEE		X							
TEXAS					X		X		Applies to general hospitals in a limited region. ERISA Preemption
UTAH	X								
VERMONT									
VIRGINIA	X	X							
WASHINGTON									
WEST VIRGINIA	X								
WISCONSIN	X								
WYOMING	X								
	11	14	1	1	5	1	5	5	

RED TEXT - Does not have and has not had AWP laws
 Pink Highlight - Repealed
 Green Highlight - Preempted by ERISA
 Blue Highlight - Currently being considered

Source: <http://www.ncsl.org/research/health/any-willing-or-authorized-providers.aspx>
 Updated May 1, 2014

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans.