

Co-Pay Equality in South Dakota

STATE LEGISLATORS OVERRIDE GOVERNOR'S VETO OF H.B. 1146.

Editorial Staff

On March 28, South Dakota legislators [overrode Governor Dennis Daugaard's veto](#) of H.B. 1146, legislation designed to prohibit health insurers from establishing higher co-payments for chiropractic services than co-payments for same or similar services by primary care physicians. The final text of H.B. 1146 reads as follows: "No health insurer may impose any copayment or coinsurance amount on an insured for services rendered by a doctor of chiropractic licensed pursuant to chapter 36-5 that is greater than the copayment or coinsurance amount imposed on the insured for the services of a primary care physician or practitioner for the same or a similar diagnosed condition even if a different nomenclature is used to describe a condition."

Introduced in the S.D. House of Representatives in January 2011 and passed by both the House (Feb. 14) and Senate (Feb. 28), H.B. 1146 went to the governor's desk on March 3. Only days later, Gov. Daugaard vetoed the legislation (one of several pieces of legislation he vetoed), offering the following explanation in a March 9 veto notification to the S.D. House of Representatives:

"I ask you to sustain this veto because HB 1146 limits consumer choice, acts as another unnecessary government mandate, and may create a new, substantial ongoing expense for the state.

"House Bill 1146 prohibits insurance companies from offering policies that charge higher copays for chiropractic care than for primary physician care. As a result, consumers and employers would not be allowed to choose policies with varying chiropractic copays. This means fewer, more expensive choices for purchasers of health insurance.

"If enacted, this bill adds to an already extensive list of 23 mandates in law relating to health insurance coverage. Another health insurance mandate restricts the ability of health plans, including the state employee plan, to negotiate rates with separate health care provider groups such as physicians, dentists, and hospitals. Every mandate is one additional item that is not subject to negotiation, meaning higher costs for plan members.

"Furthermore, the bill could create a new, substantial ongoing expense for the state. The Federal Patient Protection and Affordable Care Act requires the state to pay any benefits over and above 'essential benefits,' a term that is still undefined. If lower chiropractic care copays are not considered 'essential benefits,' a distinct possibility, the state would be required to pay them.

"Lastly, the phrase 'or practitioner for the same or similar diagnosed condition' is unclear as to what types of treatment must be subject to equal copayments. Would surgical treatment for a back injury be subject to the same copayments as chiropractic care for the same diagnosed condition? The bill as written lacks the necessary statutory clarity.

"Therefore, in order to prevent higher health insurance premiums and avoid a significant future financial liability for the State of South Dakota, I respectfully request that you sustain my veto."

In an article in the [S.D. Capital Journal](#) following the override vote - the House voted 51-15 and the

Senate voted 25-10 to override - Rep. Mark Kirkeby (R-Rapid City) "said the governor had absolutely no supporting facts for the basis of his veto," while South Dakota Chiropractors Association President, Josh Biberdorf, DC, commented, "This [legislation] is 100 percent about the patients and it stops the discrimination against chiropractors."

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