

1999 SENATE HUMAN SERVICES

SB 2378

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2378

Senate Human Services Committee

Conference Committee

Hearing Date FEBRUARY 2, 1999

Tape Number	Side A	Side B	Meter #
2	X		75
Committee Clerk Signature <i>Paul Golodjchuk</i>			

Minutes:

The hearing was opened on SB2378.

AL WOLF, ND Trial Lawyers, explained the bill. The bill was introduced to change the point at which health insurance coverage kicks in to coordinate benefits with no fault coverage under the automobile policy. It allows that to occur when total expenditures reach \$5000 and the bill changes it to \$10,000. The no-fault insurance is there to deal with bodily injury arising out of auto accidents. Your hospitalization carrier is there to deal with bodily injury arising out of automobile accidents; medical costs of any source, but since this is the primary source for arising out of accidents. This amendment would enable it to occur to a greater extent than it is now. It is the transfer of responsibility from Health care to automobile insurance.

Opposition to SB2378.

TOM SMITH, Domestic Insurance Co., opposes bill. (written testimony). SENATOR DEMERS asked if the maximum is \$30,000. MR. SMITH said \$30,000 is the minimum per person per accident. Insurance companies are required to offer more. A lot of insured only take the \$30,000 rather than spend the extra money. SENATOR DEMERS: There would be a greater amount going to health benefits and less going to other economic awards. Mr. SMITH: Yes, that is a good way to put it. SENATOR KILZER: How are payments for DRG's fitting in with other 3rd party payers? Mr. SMITH: The commercial insurance companies do not have negotiated contracts with hospitals. The pay is reasonable.

PAUL TRAYNER, Nodak Mutual Ins., is opposed to bill. Largest auto insurer in state. We are opposed to it for variety of reasons. 1. No fault insurance is a very difficult coverage to underwrite; it applies to wage loss, replacement services, survivors benefits. In 1997 our loss was 197% on coverage; in 1998 our loss was 27%. It is a very erratic insurance coverage. It is expensive coverage; comprehensive coverage. We commissioned a study of the ND no-fault insurance system. We recognize there may need to be some changes in this system but we would like to come with a complete plan. I prefer the legislature wait until we have this plan. 2. After the first \$5,000 in medical expenses, we have the right to coordinate. More and more health plans are being organized under Federal law; that means they are exempt, they don't have to coordinate with us. This bill should wait; it is not timely; we need time to improve the ND system. 3. Consumer convenience. After we hit the cap of \$5,000, a gentleman requested that we work with his health insurance plan so that more of benefits on no-fault insurance could go to his family. More money with this bill will go for health coverage and less will be left to help out with family. Recognize that just because health costs raised we are taking benefits from wage

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Senate Human Services Committee

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options. System needs to be reviewed. SENATOR THANE: Have you approached any legislator asking them to introduce a resolution calling for a study during the interim? Mr.

TRAYNOR: We have not. The industry will fund study with insurance department. SENATOR

THANE: Is there enough merit for concept of whole study? MR. TRAYNOR: Yes, many aspects. Arbitration would have good and bad points; presents many questions.

Insurance Department invited down later.

The hearing was closed on SB2378.

Discussion continued. SENATOR LEE moved DO NOT PASS. SENATOR FISCHER

seconded it. Discussion was called for. Roll call vote carried 6-0-0. SENATOR FISCHER will carry the bill.

Date: 2/8/99  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2378

Senate HUMAN SERVICES COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Sen Lee Seconded By Sen Fischer

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Lee	✓				
Senator DeMers	✓				
Senator Mutzenberger	✓				

Total 6 (yes) 0 (no)

Absent 0

Floor Assignment Sen Fischer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
February 9, 1999 7:26 a.m.

Module No: SR-26-2252  
Carrier: Fischer  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2378: Human Services Committee (Sen. Thane, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2378 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2378

TESTIMONY BY ALBERT A. WOLF ON BEHALF OF  
NORTH DAKOTA TRIAL LAWYERS ASSN. BEFORE  
SENATE HUMAN SERVICES COMMITTEE

February 2, 1999

SB 2378

Chairman Thane and members of the Committee.

Senate Bill 2378 was introduced to change the point when your health insurance coverage kicks in to coordinating benefits with your no fault coverage under your automobile policy.

Present law being copied from the procedure down through kicks in. That would give you a broader health insurance coverage at the end if you have medical bills that go beyond the \$30,000 no-fault coverage. The no-fault act was passed in the 1975 session without the \$5,000 provision in this section. This was added in the 1977 session and has not been increased to attract the increase in medical costs since 1977.

In considering this Bill, you are asked to look at subsection 1 of section 26.1-41-13 - priority of applicable security - coordination of benefits which provides that "A basic no-fault insurer has the primary obligation to make payment for economic loss because of the accidental bodily injury arising out of the operation of the motor vehicle; . . ." Thereafter, the section coordinates and divides the responsibility as shown in section 3.

Since the no-fault concept- auto accident reparations - defines "basic no-fault benefits" has benefits for economic loss resulting from accidental bodily injury not to exceed \$30,000. It seems reasonable that the first \$10,000 of economic loss should be paid out of the no-fault carrier policy before coordination with other medical policies commenced.

Therefore, it is the time to enact Senate Bill 2378.



2378

1975

- 3. Any insurer or nonprofit service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with basic no-fault benefits. Any such insurer or nonprofit service corporation may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. Any such coordination of benefits plan shall be approved by the commissioner of insurance.

1977

CHAPTER 253

HOUSE BILL NO. 1510  
(A. Hausauer, Rued)

COORDINATION OF NO-FAULT BENEFITS

AN ACT to amend and reenact subsection 3 of section 26-41-10 of the North Dakota Century Code, relating to the coordination of insurance benefits between no-fault insurers and other insurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 3 of section 26-41-10 of the 1975 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 3. Any insurer or nonprofit service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five thousand dollars of basic no-fault benefits. Any such insurer or nonprofit service corporation may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. Any such coordination of benefits plan shall be approved by the commissioner of insurance.

## ZUGER KIRMIS & SMITH

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February 2, 1999

The Honorable Judy Lee  
SENATE HUMAN SERVICES COMMITTEE  
State Capitol Building  
Bismarck, North Dakota 58505

Re: **Senate Bill 2378**

Dear Senator Lee:

During the hearing on Senate Bill 2378, you requested written comments from us as to some of the matters we testified to before the committee. I will attempt to do so.

First, Chapter 26.1-41 is the automobile no-fault law in North Dakota. This is coverage provided under all automobile policies issued in North Dakota. The coverage is basic no-fault benefits and provides \$30,000 per person per accident. This \$30,000 is available to pay for various elements of economic loss, which include medical expenses, rehabilitation expenses, work loss, replacement services loss, survivor's income loss, survivor's replacement services loss, and funeral, cremation, and burial expenses. As I indicated to the committee, every policy has this basic coverage. However, insurance companies are required to make available higher no-fault benefits than the basic \$30,000. Section 26.1-41-04, N.D.C.C.

Senate Bill 2378 amends subsection 3 of § 26.1-41-13, dealing with coordination of benefits. The concept of coordination of benefits is to avoid someone recovering the same benefits more than once.

When the no-fault law was originally enacted in 1975, an insurance company, HMO, or nonprofit health service corporation other than a basic no-fault insurer authorized to do business in North Dakota could coordinate any benefits it was obligated to pay for economic loss incurred as a result of an accidental bodily injury. A number of health

The Honorable Judy Lee  
February 2, 1999  
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insurance companies, specifically Blue Cross Blue Shield, did file for coordination of benefits prior to the law becoming effective on January 1, 1976. These health insurance companies would not pay medical expenses when the basic no-fault insurer paid. This resulted in individuals seriously injured in motor vehicle accidents with medical expenses in excess of \$15,000 not receiving any basic no-fault benefits for the other elements of economic loss. In the 1977 legislative session, the Legislature placed the \$5,000 limit on health insurance companies' coordinating benefits with basic no-fault benefits.

This created the possibility of collecting double benefits in excess of this \$5,000. There was a 1987 amendment which added a new sentence to the subsection, which reads:

A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidentally bodily injuries in excess of five thousand dollars.

This is the sentence that appears at lines 11-14 of Senate Bill 2378. This authorizes no-fault insurers to coordinate benefits in excess of \$5,000 if there is a health insurance policy in force.

If someone is injured in a motor vehicle accident and sustains serious injuries, the automobile insurer pays the first \$5,000 of medical expenses. If that person also has health insurance, the health insurer picks up medical expenses after the \$5,000. This means that a person injured in a motor vehicle accident can use the remaining \$25,000 to pay for the other types of losses available as basic no-fault benefits, which would include rehabilitation expenses, work loss, replacement services loss, survivor's income loss, survivor's replacement services loss, and funeral expenses.

Hopefully, I have adequately explained how the provisions of Senate Bill 2378 operate under the existing law. Senate Bill 2378 would change the amount available for coordination of benefits from \$5,000 to \$10,000. We believe the existing law has worked well and has benefitted people who are seriously injured in motor vehicle accidents. We hope that you do not give a favorable recommendation to Senate Bill 2378.

Very truly yours,



Thomas O. Smith

tsmith\020299 lee

Thomas O. Smith on behalf of  
the Domestic Insurance Companies

PREPARED TESTIMONY ON SENATE BILL 2378  
SENATE HUMAN SERVICES COMMITTEE  
FEBRUARY 9, 1999

SB 2378 amends § 26.1-41-13(3) relating to the coordination of health insurance benefits with automobile no-fault benefits.

Chapter 26.1-41 is the automobile no-fault law in North Dakota. Basic no-fault benefits are provided under all automobile insurance policies issued in North Dakota. Basic no-fault benefits provide coverage of \$30,000 per person per accident. This \$30,000 is available to pay for economic loss incurred in an automobile accident, which includes medical expenses, rehabilitation expenses, work loss, replacement services loss, survivor's income loss, survivor's replacement services loss, and funeral, cremation, and burial expenses. Even though every automobile insurance policy has this basic coverage, insurance companies are required to make available higher no-fault limits than the basic \$30,000. See § 26.1-41-04, N.D.C.C.

When the no-fault law was originally enacted in 1975, an insurance company, HMO, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in North Dakota could coordinate any benefits it was obligated to pay for economic loss incurred as a result of injuries occurring in motor vehicle accidents. A number of health insurance companies, specifically Blue Cross Blue Shield, did file for coordination of benefits prior to the law prior becoming effective on January 1, 1976. This meant that the health insurance companies would not pay any medical expenses when the

basic no-fault insurer paid. This resulted in individuals seriously injured in motor vehicle accidents not receiving any basic no-fault benefits for the other elements of economic loss sustained in the motor vehicle accident. In the 1987 legislative session, there was an attempt made to repeal this provision. Rather than repealing the section, the Legislature placed the \$5,000 limit on the right of health insurance companies to coordinate benefits with basic no-fault benefits.

The result of this amendment was to the effect that after the no-fault insurer paid the \$5,000 of basic no-fault benefits for medical expenses, the injured person could recover duplicate benefits for medical expenses from both the health insurance company and the basic no-fault insurer. In 1987, there was an additional amendment put in this section which adds a new section which reads:

A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of five thousand dollars.

This is the sentence that appears at lines 11-14 of SB 2378. This authorizes no-fault insurers to coordinate benefits in excess of \$5,000 if there is a health insurance policy in force in order to avoid duplicate benefits. Those basic no-fault insurers still have the obligation to pay for all of the other expenses, which are rehabilitation expenses, work loss, replacement services loss, survivor's income loss, survivor's replacement services loss, and funeral, cremation, and burial expenses.

The bill also removes the language on line 15, which reads: "other than a basic no-fault insurers, ". This was an amendment that was put in 1991. The reason it was put in was because no-fault insurers did not have any information as to how many of their insureds had health insurance and could not comply with the language as to how much

savings would result by allowing them to coordinate benefits. The North Dakota Insurance Department took the position that no-fault insurers could not put in their contracts a coordination of benefits provision without reducing premiums, even though the information was not available. No-fault insurers' premiums are based upon the actual experience they incur as far as losses are concerned, and there really is no need for them to do the justification for coordination of benefits as opposed to health insurance carriers.

The way the law works presently is that if someone is injured in a motor vehicle accident and sustains serious injuries, the automobile insurer pays the first \$5,000 of medical expenses. If that person also has health insurance, the health insurance picks up medical expenses after the first \$5,000. This means that a person injured in a motor vehicle accident can use the remaining \$25,000 to pay for the other types of losses available as basic no-fault benefits.

SB 2378 would change the existing law to allow health insurers to coordinate benefits up to \$10,000. This would reduce an injured person's right to be reimbursed for economic loss other than medical expenses. We believe the existing law has worked well and has benefited people who are seriously injured in motor vehicle accidents. We hope that you do not give a favorable recommendation to SB 2378.