

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1052

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1052  
January 10, 2011  
12700

☐ Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:** Information & analysis of managed care under the workers' compensation

## Minutes:

**Chairman Keiser:** Opens the hearing on HB 1052.

**Jennifer Clark, Legislative Council:** This is a companion bill with HB 1054. They both deal with pain killing treatments for long term injuries. We have Consulting give a couple of recommendations on ways to deal with that. WSI took those recommendations and tweaked them to figure out a way to deal with it within our system. One of the ways is to look at records out of managed care treatment from WSI to make that information available. That gives a record that can be accessed that talks about a physician's pattern of treatment, their prescriptions, the cost and outcome of that treatment. That will give accountability through public information. The beef of this is in the bill page 1, lines 13-16.

**Chairman Keiser:** This will identify physicians, different drug utilization. Would other health care institutions be identified?

**Jennifer Clark:** My assumption is, if it is part of the managed care program and WSI collects that data through a clinic, that the information would be available.

**Chairman Keiser:** Testify in opposition, neutral?

**Rob Forward~Staff Attorney at WSI:** (see attached testimony).

**Representative Gruchalla:** There are some doctors that are publicly known that it is the place to go to get pain pills. He will give you all the pain pills you need. Some of these end up on the street being sold on the black market. Is this intended for that purpose, to identify the clinic or doctors that are abusing the system?

**Rob Forward:** I think that's one of the reasons. Accountability is what it is aimed at.

**Representative Amerman:** It mentions only the final report, is that when it is over with or finalized?

**Rob Forward:** Currently that information is used in two different areas in that agency. The first is our medical services department. Our Pharmacist on site now has the ability to run certain reports. It is not too polished, but we are dependent on technology. We have only two reports that were done in the last 2-3 years. One was about narcotic prescribing and the other was a special investigation regarding some doctors in the state. The statute says when the special investigation unit is involved, that will not become public if and until that investigation is ever completed. When it is completed, under this language it will become public.

**Representative Amerman:** When it says final report, it isn't final report of each individual's WSI case. It's a final report of the two reports you mentioned.

**Rob Forward:** It would have nothing to do with the claimant's file. It's directed at the scrutiny of particular providers and attempting to profile their treatment patterns. It has a language all of its own. Maybe WSI wanted to run a report on doctors who are out liars. They are prescribing more treatment outside the norm than their peers and they would run a report using some of the technology. It would have nothing to do with the injured workers' claim or case. It is the treatment of the injured workers.

**Representative M Nelson:** You are talking about using the public report. Couldn't the injured worker also use it to increase his odds of receiving narcotics by knowing who is most likely to prescribe them.

**Rob Forward:** I hadn't thought of that. It is possible.

**Representative Ruby:** This didn't come up in the interim committee, could this cause conflict between the agency and certain providers if this is made public?

**Rob Forward:** Yes.

**Chairman Keiser:** In health care there are two issues. One is severity and then frequency. There is a natural migration of injured people needing health care to become informed and migrate to providers who are good. In our community there are certain doctors who tend to get the more severe cases. As a result if you look at their outcome, it's not going to look as good as for some other providers. When we make this public information that might discourage them from participating in WSI claims. There are a few providers who are the providers of last resort who get an identification because severely injured workers on long-term pain management migrate to them. How is this going to change, other than to provide an embarrassment factor. Last session we encouraged North Dakota doctors to become engaged in services to WSI. This takes us in the opposite direction.

**Ron Forward:** I agree. We have a hard enough time getting doctors to treat our injured workers and this will put a further wedge between. The good doctors get the worst cases. Many times the worst cases end up with bad outcomes.

**Representative Frantsvog:** In your recommendations 6.6, the last sentence, where it talks about profile results, the sample should be shared with other interested stakeholders around the state. Who are other interested stakeholders?

**Ron Forward:** Yes, our understanding of what the evaluator meant by that language was that it would be employers and legislators, our board. All of which are members of the public. So it makes it an open record.

**Representative Frantsvog:** So if I am an interested stakeholder, would I request information?

**Ron Forward:** We would treat it like an open record request. So you would either send us in writing or call us and request it.

**Representative Frantsvog:** Is the report accumulative or is it by individual?

**Ron Forward:** The reports will take on whatever format they have. We would have to be mindful of not giving out injured worker information. But it could be most likely an excel spreadsheet.

**Vice Chairman Kasper:** If this bill is not passed, will it cause any problems inside WSI?

**Ron Forward:** No, it would make our lives easier if it did not pass.

**Representative Clark:** You are testifying in neutral position. Would the agency be happy if this bill went away?

**Ron Forward:** It would bother no one.

**Representative N Johnson:** This bill is making information public. Currently does WSI have this information? If there is a concern about a particular physician that is over prescribing do you already keep track of it?

**Ron Forward:** Only in the recent past have we begun to generate reports like this. We anticipate we'll be generating more. The reason is technology based because this information is found on medical bills and reports and you need technology to crunch those numbers.

**Representative Kreun:** Who is going to ask for these reports?

**Ron Forward:** It could be anyone.

**Representative Kreun:** So you're not singling out a doctor, but you are making a comparison with other doctors in their profession that do the same type of work. Don't you think the people that are paying the premium, which is the employer, should have that knowledge?

**Ron Forward:** Very good point. The way the bill is written right now, it is broader than that. I could foresee when WSI gets a better handle on the reports it is able to produce, that information may be able to put legislation together to create something like a report card of treatment providers. It could be part of a preferred provider network which we currently don't have. If we had a larger population and a larger medical community that is treating injured workers, it becomes a more useful tool. With the low population it may not be a good value.

**Representative Kreun:** Down the road an employer and employee have a close relationship. I think being able to bring that person back to work, this information would help to gain that knowledge so they can be rehabilitated. I think this is a good tool for the employer.

**Chairman Keiser:** Anyone else to testify in a neutral.

**Bruce Levi~ Executive Director and General Counsel, ND Medical Association:** If the purpose of this bill is to embarrass providers we would oppose it. I think when you propose legislation like this, it has a chilling effect. If we want physicians to practice good medicine, why put in legislation that affects all physicians. If you are concerned about a physician who is an out liar, and medically necessary care is not being provided, there are plenty of procedures in place where the agency can go and work with that physician. Based on what we just heard, the ND Medical Association opposes this legislation.

**Duane Houdek, Executive Secretary of ND Board of Medical Examiners:** We are a state board that licenses and disciplines physicians. We have had this question given to us because we have a website that identifies doctors. Our board has consistently chosen not to offer that kind of profiles for the reason Chairman Keiser indicated.

**Representative Amerman:** If the bill is killed and this information doesn't go public but through technology these reports are coming in and WSI sees some flags within these reports, is there action your board could take if there are doctors that are not so good.

**DuaneHoudek:** Yes. That is exactly what we do.

**Chairman Keiser:** Closed the hearing.

**Representative Ruby:** I think there are some unintended consequences to this and we don't want to create a divide between WSI and the providers. I move a **Do Not Pass**.

**Vice Chairman Kasper:** Seconded the motion.

**Representative Amerman:** I think a negative vote is a good one this time.

**Chairman Keiser:** No provider is required to participate in WSI. We had a pattern up until two years ago where very few ND providers were willing to participate. That means we are bringing doctors in from all over at great expense. I think the motion is appropriate. This would provide the information. There is no penalty. This bill doesn't deserve to be carried forward.

A roll call vote was taken on **Do Not Pass** with 14 yes and 0 no, 0 absent. Motion carried.

**Rep. Amerman** will carry the bill.

**FISCAL NOTE**  
Requested by Legislative Council  
12/15/2010

Bill/Resolution No.: HB 1052

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                | 2009-2011 Biennium |             | 2011-2013 Biennium |             | 2013-2015 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       |                    |             |                    |             |                    |             |
| Expenditures   |                    |             |                    |             |                    |             |
| Appropriations |                    |             |                    |             |                    |             |

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  | 2013-2015 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation opens for public inspection final reports of managed care information relating to patterns of treatment, medication prescription, cost, and outcomes by health care providers.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE  
2011 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1052

BILL DESCRIPTION: Provider Confidentiality Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation opens for public inspection final reports of managed care information relating to patterns of treatment, medication prescription, cost, and outcomes by health care providers.

FISCAL IMPACT: No fiscal impact is anticipated.

DATE: December 15, 2010

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

|               |                |                |            |
|---------------|----------------|----------------|------------|
| Name:         | John Halvorson | Agency:        | WSI        |
| Phone Number: | 328-6016       | Date Prepared: | 12/22/2010 |



Date: Jan 10, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1052

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Ruby Seconded By VC Kasper

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser          | ✓   |    | Representative Amerman   | ✓   |    |
| Vice Chairman Kasper     | ✓   |    | Representative Boe       | ✓   |    |
| Representative Clark     | ✓   |    | Representative Gruchalla | ✓   |    |
| Representative Frantsvog | ✓   |    | Representative M Nelson  | ✓   |    |
| Representative N Johnson | ✓   |    |                          |     |    |
| Representative Kreun     | ✓   |    |                          |     |    |
| Representative Nathe     | ✓   |    |                          |     |    |
| Representative Ruby      | ✓   |    |                          |     |    |
| Representative Sukut     | ✓   |    |                          |     |    |
| Representative Vigasaa   | ✓   |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |

Total (Yes) 14 No 0

Absent \_\_\_\_\_

Floor Assignment Amerman

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

**REPORT OF STANDING COMMITTEE**

**HB 1052: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1052 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1052

2011 House Bill No. 1052  
Testimony before the House Industry, Business & Labor Committee  
Presented by: Rob Forward, Staff Attorney  
Workforce Safety & Insurance  
January 10, 2011

Good morning Mr. Chairman and Members of Committee:

My name is Rob Forward. I am a staff attorney at Workforce Safety & Insurance (WSI) and on behalf of the agency I am here to offer technical assistance on HB 1052.

This bill proposes to make certain information about medical providers who treat injured workers open to public inspection. Currently, the agency's analysis of an identified doctor that may include scrutiny of treatment patterns, narcotic prescriptions, costs, and outcomes is confidential. HB 1052 would make final reports about these topics open to the public to the extent that injured workers are not identified. All other information that is not included in the final report, such as the raw data and working papers from the analysis, would still be confidential.

The catalyst for this bill was a recommendation that arose out of WSI's 2010 Performance Evaluation that was completed by an independent firm, Sedgwick CMS. The following is the relevant part of their report:

*Recommendation 6.6:* A process for the profiling of pain management providers should be developed. Cases in the sampling should track medical costs and disability days from the date of the first visit with the pain management provider. A data sub-set of the medical spend should include the cost of narcotic medicines, including the comparative costs for dispense as written, generic and brand medicines. Profile results should be shared with the providers in the sample and with other interested stakeholders around the state. Injured workers should never be identified in the profiling.

This concludes my testimony. I'd be happy to answer any of your questions.