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Deanna Hall
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10/2/03
Date

2003 HOUSE JUDICIARY

HB 1163

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10/2/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1163

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-27-03

Tape Number	Side A	Side B	Meter #
1	xx		21-36
Committee Clerk Signature <i>d. Penrose</i>			

Minutes: 12 members present, 1 member absent (Rep. Maragos)

Chairman DeKrey: We will open the hearing on HB 1163.

Michael Mullen, Asst. AG: (see attached testimony)

Rep. Kretschmar, acting chairperson: Thank you.

Rep. Klemin: Question regarding section 1, does this mean, I don't see anywhere where the person's family is mentioned here, does this mean that they can't disclose anything to the person.

Mr. Mullen: No. This is just an additional provision that allows disclosure beyond what is permitted by the privacy rule. The old language will still be in effect, just adding that personal representative will include an attorney.

Rep. Klemin: Retain counsel? That would include appointed counsel?

Mr. Mullen: Yes.

Rep. Kretschmar: Thank you. Anyone else wishing to testify in support of HB 1163.

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10/2/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number HB 1163
Hearing Date 1-27-03

**Karen Larson, Director of the Division of Mental Health and Substance Abuse in the
Dept. of Human Services:** (see attached testimony)

Rep. Kretschmar: Thank you. Anyone else wishing to testify in favor of HB 1163? In
opposition of HB 1163? We will close the hearing.

(Reopened the meeting later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1163.

Rep. Kretschmar: I make a motion for Do Pass.

Rep. Delmore: Seconded.

Chairman DeKrey: Any discussion.

Rep. Grande: Is it necessary to have an effective date and emergency status?

Rep. Kretschmar: It is supposed to become effective on that date.

Rep. Grande: If this passes before April 14, great; if not, it will go into effect before August 1.

Rep. Delmore: I am assuming this to be April 14 to be in compliance with the other regulations.
That is the compliance date.

Rep. Maragos: If you want it to go into effect immediately, you have to have the emergency
clause.

Discussion continued regarding the emergency status vs. the effective date.

12 YES 0 NO 1 ABSENT DO PASS CARRIER: Rep. Maragos

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Date: 1/27/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1163

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Kretschmar Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	AB	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Maragos

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

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1/27/03
Date

REPORT OF STANDING COMMITTEE (410)
January 27, 2003 10:53 a.m.

Module No: HR-15-1102
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1163: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS**
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1163 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-15-1102

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10/2/03
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2003 SENATE HUMAN SERVICES

HB 1163

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1163

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
1		X	4825 - end
2	X		0 - 652
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR LEE opened the public hearing on HB 1163 relating to accounting for the disclosure of health information of an individual committed for the treatment of mental illness; to provide an effective date; and to declare an emergency.

MIKE MULLEN, Assistant Attorney General, testified in behalf of Attorney General Stenehjem and on behalf of the Department of Human Services clarifying the relationship between state law requiring the confidential treatment of health information in a civil commitment proceeding and the federal HIPAA privacy rule. (Written testimony) (Meter # 5073 - 6129)

SENATOR LEE: Mentioned previous bill SB 2296 regarding release of records. Discussion with Mike Mullen regarding SB 2345 and HB 1163 on voluntary commitment ... no conflict. (6130 - end and Tape 2, Side A, Meter # 0 - 196)

KAREN LARSON, Director of the Division of Mental Health and Substance Abuse in the Department of Human Services testified. In addition to concurring with the recommended

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10/2/03
Date

Page 2

Senate Human Services Committee

Bill/Resolution Number HB 1163

Hearing Date March 3, 2003

changes to make the language of the current commitment law compliant with HIPAA

requirements, the Department recommended the addition of the following language found on

lines 8 and 9 on page two of the bill: A request for examination at the state hospital must be

screened and approved by a regional human service center. (Written testimony) (Meter #216 -

370)

SENATOR FAIRFIELD: Only be involuntary commitment? Discussion with Ms. Larson

regarding screening of potential admissions and civil commitment law. (Meter # 382 - 629)

SENATOR LEE closed the public hearing on HB 1163. (Meter # 652)

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1163

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
1		X	4520 - 4908
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR JUDY LEE opened the discussion on HB 1163 relating to accounting for the disclosure of health information of an individual committed for the treatment of mental illness. She stated John Olson had asked if we would hang on to the bill for a day because he wanted to visit with the states attorney ... he said he had been told that the regional human service centers are doing it now ... screening for civil commitment. He doesn't have a concern about the bill and it doesn't seem that anybody else did either. So, knowing that there seems to be no objection to this bill, I would like to see us act on it. Mr. Mullen had talked to us about the HIPAA stuff and then, the only concern that had been raised was on Page 2. ... The states attorney said there was an initial concern about whether or not human service center could overrule something that the judge had determined to happen. But, this process is already in place so this isn't a new thing. ... (Meter # 4520 - 4711)

SENATOR POLOVITZ moved to DO PASS

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Page 2
Senate Human Services Committee
Bill/Resolution Number HB 1163
Hearing Date March 5, 2003

SENATOR BROWN seconded the motion.

SENATOR LEE: Any discussion on the do pass.

Roll call was read. 5 yeas 0 nays and 1 absent - SENATOR FAIRFIELD.

SENATOR ERBELE to be the carrier. (Meter # 4908)

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10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1163

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 12, 2003

Tape Number	Side A	Side B	Meter #
3	X		1850 - 2393
Committee Clerk Signature <i>Donna Kramer, Clerk</i>			

Minutes:

SENATOR JUDY LEE reopened the committee discussion on HB 1163 regarding the disclosure of health information of an individual committed for the treatment of mental illness. Senator Lee stated that this bill had been called back for reconsideration.

SENATOR FAIRFIELD stated some things had been called to her attention and she had visited with the Attorney General's office on this, as well. The section that the Human Services Department wanted included regarding a request for an examination at the State Hospital which must be screened and approved by a Regional Human Service Center, and the rationale given for putting that in the bill. There was some question about whether this would supersede a judge's order. ... This is an issue that should be a stand-alone issue, it should be a separate bill. But, because of another situation they decided to put it in here. Senator Fairfield said she had requested that it be brought back so that we could look at possible amendments.

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10/2/03
Date

Page 2

Senate Human Services Committee

Bill/Resolution Number HB 1163

Hearing Date March 12, 2003

SENATOR LEE stated that John Olson, of the States Attorneys Association, mentioned this to me before we ever took it to the floor in the first place and he had visited with the States Attorneys and they thought it was fine.

SENATOR FAIRFIELD stated it was her concern it really had no place in that bill. It is an issue that should be have been a stand-alone bill. There are concerns about this provision. ...

There is a section of the bill about admissions. ... This is not just a housekeeping change. With that, I move the amendment or reconsider.

SENATOR FAIRFIELD made a motion to RECONSIDER.

SENATOR POLOVITZ seconded the motion.

Discussion regarding the reconsideration.

Roll call was read. 4 no and 2 yes.

SENATOR LEE stated the move to RECONSIDER has not passed, and as a result we will move it back out on the floor.

SENATOR ERBELE will be carrier. (Meter # 2393)

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10/2/03

Date: 03-05-03
Roll Call Vote #: ①

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1163

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Polovitz Seconded By Sen. Brown

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee - Chairman	✓				
Senator Richard Brown - V. Chair.	✓				
Senator Robert S. Erbele	✓				
Senator Tom Fischer	✓				
Senator April Fairfield					
Senator Michael Polovitz	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Sen. Erbele

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

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10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 5, 2003 1:46 p.m.

Module No: SR-39-3984
Carrier: Erbele
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1163: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1163 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-39-3984

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Dennis J. Hall
Operator's Signature

10/2/03
Date

Date: _____
Roll Call Vote #: _____

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1163

Senate	Human Services	Committees
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☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By

Seconded By

[illegible]**Total (Yes)**

No

Absent

Floor Assignment

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

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Dennon
Operator's Signature

18/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 13, 2003 11:47 a.m.

Module No: SR-45-4658
Carrier: Erbele
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1163: Human Services Committee (Sen. J. Lee, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1163 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-45-4658

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2003 TESTIMONY

HB 1163

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TESTIMONY
HB 1163
HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
JANUARY 27, 2003

Chairman DeKrey and members of the House Judiciary Committee: For the record, my name is Karen Romig Larson, Director of the Division of Mental Health and Substance Abuse in the Department of Human Services. I appear before you today to support HB 1163, and to comment specifically on Section 2, lines 8 and 9.

In addition to concurring with the recommended changes to make the language of the current commitment law compliant with HIPAA requirements, the Department recommends the addition of the following language found on lines 8 and 9 on page two of the bill: A request for examination at the state hospital must be screened and approved by a regional human service center.

The requested change to this section of the law is requested to align it with NDCC Ch. 25-03.1-04 which requires screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed by a regional human service center. This will allow for expert examination to be conducted by qualified staff at the regional human service center. If the human service center determines it to be advisable to refer the client to the ND State Hospital for expert examination, it will then do so.

The development of regional screening and recommendation for appropriate levels of care has been very important to allowing for utilization of appropriate and qualified community based services, while continuing to recognize the need, at times, for that service to be delivered at the ND State Hospital.

Thank you for the opportunity to appear before you today. I will attempt to answer any questions you may have.

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Duane DeKrey
Operator's Signature

1/21/03
Date

TESTIMONY OF THE OFFICE OF ATTORNEY GENERAL
ON HOUSE BILL 1163 REGARDING THE CONFIDENTIAL TREATMENT OF HEALTH
INFORMATION IN A CIVIL COMMITMENT PROCEEDING

BEFORE
HOUSE JUDICIARY COMMITTEE
JANUARY 27, 2003

MICHAEL J. MULLEN
ASSISTANT ATTORNEY GENERAL

Chairman DeKrey and Members of the Committee, I am pleased to be here on behalf of Attorney General Stenehjem, and on behalf of the Department of Human Services, who asked me to testify in support of House Bill 1163, which clarifies the relationship between state law requiring the confidential treatment of health information in a civil commitment proceeding, and the federal HIPAA privacy rule. Before I address the provisions of House Bill 1163, let me briefly outline the background and purpose of the federal HIPAA privacy rule.

Background on the HIPAA Rule for the Privacy of Health Information

The federal regulation entitled *Standards for Privacy of Individually Identifiable Health Information* (the Privacy Rule), which was promulgated by the Department of Health and Human Services (HHS), became effective on April 14, 2001. [The regulations are found at 45 CFR [Code of Federal Regulations] Parts 160 and 164.] The Privacy Rule is the first comprehensive federal protection for the privacy of health information.

The privacy rule came about as a result of the Health Insurance Portability and Accountability Act [commonly called "HIPAA"], 29 U.S.C. §§ 1181 – 1191c (enacted in 1996), which established a number of rules to provide greater access to health

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insurance regardless of a person's health status. Title II, subtitle F sections 261-264 of HIPAA, 42 U.S.C. §§ 1320d -- 1320d-8, sets forth a program for "administrative simplification," which requires all health care providers and insurers to establish uniform billing and coding systems in order to simplify and reduce the administrative costs of the health care system. Congress also recognized, however, that a uniform electronic billing system, which would necessarily include detailed information about the diagnosis and treatment received by individual patients, would also greatly increase the capacity for accidental or intentional disclosure of *individually identifiable* health information. Therefore, Congress required the Secretary of Health and Human Services to establish regulations to protect the privacy and security of health information.

On December 28, 2000, the final rules on the privacy of individually identifiable health information were published. The effective date of the privacy rules is April 14, 2001. In addition, under the rules, the *compliance date* for most organizations is two years following the effective date. Thus, doctors, dentists, hospitals, clinics, health insurance companies, and specified government health plans have until April 14, 2003, to bring their operations into compliance with the HIPAA privacy rules. (Small health plans, roughly those with an annual premium revenue of \$5 million or less, have an additional year to come into compliance.)

Because of concern that the privacy rule had certain unintended consequences that could have impaired the treatment of patients and made practical compliance with the privacy rule difficult, the Secretary of Health and Human Services made several changes to the rule, which were published on August 14, 2002. And, as I mentioned,

all covered entities (except small health plans) must be in compliance with the privacy rule by April 14 of this year.

The Purpose of House Bill 1163

The purpose of House Bill 1163 is to clarify North Dakota law and make it easier for health care providers and the courts to comply with the requirements of both the federal HIPAA privacy rule, and chapter 25-03.1, which set forth the procedures for the civil commitment of a person who requires treatment for mental illness or substance abuse. The bill does not reduce the privacy protection that is given to health information that is disclosed in connection with a civil commitment proceeding. The bill also does not place unreasonable restrictions on the use of this information -- to the extent disclosure is needed to permit the courts to carry out their responsibilities under chapter 25-03.1, and to permit psychiatrists, psychologists, and other mental health care providers to carry out their responsibility to care for individuals who require treatment for mental illness.

Let me now turn to the substantive provisions of House Bill 1163.

Section-By-Section Analysis

Section 1, which creates a new section 25-03.1-03.1, clarifies that a treating facility may disclose individually identifiable health information to a court, human service center, state's attorney, and the subject's retained counsel. This section is necessary because under the HIPAA privacy rule, an individual's legal counsel is not included in the definition of a "personal representative." I should explain that "Individually identifiable health information" is a key term under the HIPAA privacy rule. It means "health information, including demographic information collected from an individual, ... [that]: [1] is created or received by a health care provider, health plan, employer, or health care clearinghouse;

Deanna Hallmark
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10/2/03
Date

and [2] relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

- I. That identifies the individual; or
- II. With respect to which there is a reasonable basis to believe the information can be used to identify the individual."

In other words, it includes health information about an individual that identifies them directly by name, address, patient ID number, or social security number, or indirectly by means of a series of demographic variables including date of birth, gender, race, marital status, and Zip code.

Section 2, which amends section 25-03.1-10, clarifies that an expert appointed to conduct an examination may consult with or request participation in the examination by any qualified mental health professional and may include in their report any findings or observations made by that mental health professional. Section 2 also amends section 25-03.1-10 (on a matter unrelated to HIPAA) to require that any request for examination at the state hospital must be screened and approved by a regional human service center.

Section 3, which amends subsection 1 of section 25-03.1-13, clarifies that the legal counsel appointed to represent a person subject to a civil commitment proceeding "must have access" to the client's health information. (Because the disclosure is "required by law" it is permitted under the HIPAA privacy rule.)

Section 4, which amends section 25-03.1-43, simplifies the list of persons to whom the information and records obtained in the course of a civil commitment proceeding may be disclosed by specifying that this information may be disclosed (1) to a court as required

to carry out the purposes of the civil commitment chapter, and (2) as authorized under the HIPAA privacy rule. Disclosure under current law is similar to, but slightly different than, the disclosure authorized under the HIPAA privacy rule. Thus, to avoid unnecessary technical analysis in the case of each civil commitment proceeding, the standard specified in the federal privacy rule will be followed.

Section 5, which amends subsection 20 of section 43-17-31, clarifies that a physician may be subject to disciplinary action for the failure to transfer medical records to another physician or to supply a copy of the records to the patient, if the patient makes such a request ("except if the disclosure is otherwise limited or prohibited by law"). A reference to a Board of Medical Examiners rule relating to the transfer of psychiatric treatment records is repealed because the HIPAA privacy rule adequately covers this issue, and is "more stringent" (i.e., restrictive) with respect to the disclosure of "psychotherapy notes," thus superceding North Dakota law on this issue.

Section 6 repeals section 25-03.1-44 relating to "accounting" for the disclosure of individually identifiable health information about an individual who is the subject of a civil commitment proceeding. The HIPAA privacy rule contains detailed requirements on accounting for disclosure of health information. In addition, the state hospital and other providers will still be required to "chart" required information relating to the disclosure of a patient's health information.

Section 7 provides that this bill is an emergency measure.

Section 8 provides that the bill is effective April 14, 2003, which is the date on which all health plans and covered providers must be in compliance with the HIPAA privacy rule.

* * *

Mr. Chairman, thank you for providing me an opportunity to discuss House Bill 1163, which clarifies the use and disclosure of protected health information in connection with a civil commitment proceeding. I will be pleased to answer any questions you or other members of the committee have regarding the bill, which we believe aligns North Dakota law with the federal HIPAA privacy rule, and in turn will assist providers, payers, and government agencies in achieving compliance with the privacy rule.

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TESTIMONY
HB 1163
SENATE HUMAN SERVICES COMMITTEE
SENATOR JUDY LEE, CHAIR
MARCH 3, 2003

Chairperson Lee and members of the Senate Human Services Committee: For the record, my name is Karen Romig Larson, Director of the Division of Mental Health and Substance Abuse in the Department of Human Services. I appear before you today to support HB 1163, and to comment specifically on Section 2, lines 8 and 9.

In addition to concurring with the recommended changes to make the language of the current commitment law compliant with HIPAA requirements, the Department recommends the addition of the following language found on lines 8 and 9 on page two of the bill: A request for examination at the state hospital must be screened and approved by a regional human service center.

The requested change to this section of the law is requested to align it with NDCC Ch. 25-03.1-04 which requires screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed by a regional human service center. This will allow for expert examination to be conducted by qualified staff at the regional human service center. If the human service center determines it to be advisable to refer the client to the ND State Hospital for expert examination, it will then do so.

The development of regional screening and recommendation for appropriate levels of care has been very important to allowing for utilization of appropriate and qualified community based services, while continuing to recognize the need, at times, for that service to be delivered at the ND State Hospital.

Thank you for the opportunity to appear before you today. I will attempt to answer any questions you may have.

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Doreen Hall
Operator's Signature

10/2/03
Date

TESTIMONY OF THE OFFICE OF ATTORNEY GENERAL
ON HOUSE BILL 1163 REGARDING THE CONFIDENTIAL TREATMENT OF HEALTH
INFORMATION IN A CIVIL COMMITMENT PROCEEDING

BEFORE
SENATE HUMAN SERVICES COMMITTEE
MARCH 3, 2003

MICHAEL J. MULLEN
ASSISTANT ATTORNEY GENERAL

Chairman Lee and Members of the Committee, I am pleased to be here on behalf of Attorney General Stenehjem, and on behalf of the Department of Human Services, who asked me to testify on House Bill 1163, which clarifies the relationship between state law requiring the confidential treatment of health information in a civil commitment proceeding and the federal HIPAA privacy rule. Before I address the provisions of House Bill 1163, let me briefly outline the background and purpose of the federal HIPAA privacy rule.

Background on the HIPAA Rule for the Privacy of Health Information

The federal regulation entitled *Standards for Privacy of Individually Identifiable Health Information* (the Privacy Rule), which was promulgated by the Department of Health and Human Services (HHS), became effective on April 14, 2001. [The regulations are found at 45 CFR [Code of Federal Regulations] Parts 160 and 164.] The Privacy Rule is the first comprehensive federal protection for the privacy of health information.

The privacy rule came about as a result of the Health Insurance Portability and Accountability Act [commonly called "HIPAA"], 29 U.S.C. §§ 1181 – 1191c (enacted in 1996), which established a number of rules to provide greater access to health insurance regardless of a person's health status. Title II, subtitle F sections 261-264 of

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HIPAA, 42 U.S.C. §§ 1320d -- 1320d-8, sets forth a program for "administrative simplification," which requires all health care providers and insurers to establish uniform billing and coding systems in order to simplify and reduce the administrative costs of the health care system. Congress also recognized, however, that a uniform electronic billing system, which would necessarily include detailed information about the diagnosis and treatment received by individual patients, would also greatly increase the capacity for accidental or intentional disclosure of *individually identifiable* health information. Therefore, Congress required the Secretary of Health and Human Services to establish regulations to protect the privacy and security of health information.

On December 28, 2000, the final rules on the privacy of individually identifiable health information were published. The effective date of the privacy rules is April 14, 2001. In addition, under the rules, the *compliance date* for most organizations is two years following the effective date. Thus, doctors, dentists, hospitals, clinics, health insurance companies, and specified government health plans have until April 14, 2003, to bring their operations into compliance with the HIPAA privacy rules. (Small health plans, roughly those with an annual premium revenue of \$5 million or less, have an additional year to come into compliance.)

Because of concern that the privacy rule had certain unintended consequences that could have impaired the treatment of patients and made practical compliance with the privacy rule difficult, the Secretary of Health and Human Services made several changes to the rule, which were published on August 14, 2002. And, as I mentioned, all covered entities (except small health plans) must be in compliance with the privacy rule by April 14 of this year.

Deanna H. Baller
Operator's Signature

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Date

The Purpose of House Bill 1163

The purpose of House Bill 1163 is to clarify North Dakota law and make it easier for health care providers and the courts to comply with the requirements of both the federal HIPAA privacy rule, and chapter 25-03.1, which set forth the procedures for the civil commitment of a person who requires treatment for mental illness or substance abuse. The bill does not reduce the privacy protection that is given to health information that is disclosed in connection with a civil commitment proceeding. The bill also does not place unreasonable restrictions on the use of this information -- to the extent disclosure is needed to permit the courts to carry out their responsibilities under chapter 25-03.1, and to permit psychiatrists, psychologists, and other mental health care providers to carry out their responsibility to care for individuals who require treatment for mental illness.

Let me now turn to the substantive provisions of House Bill 1163.

Section-By-Section Analysis

Section 1, which creates a new section 25-03.1-03.1, clarifies that a treating facility may disclose individually identifiable health information to a court, human service center, state's attorney, and the subject's retained counsel. This section is necessary because under the HIPAA privacy rule, an individual's legal counsel is not included in the definition of a "personal representative." I should explain that "individually identifiable health information" is a key term under the HIPAA privacy rule. It means "health information, including demographic information collected from an individual, ... [that]: [1] is created or received by a health care provider, health plan, employer, or health care clearinghouse; and [2] relates to the past, present, or future physical or mental health or condition of an

individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

- i. That identifies the individual; or
- ii. With respect to which there is a reasonable basis to believe the information can be used to identify the individual."

In other words, it includes health information about an individual that identifies them directly by name, address, patient ID number, or social security number, or indirectly by means of a series of demographic variables including date of birth, gender, race, marital status, and zip code.

Section 2, which amends section 25-03.1-10, clarifies that an expert appointed to conduct an examination may consult with or request participation in the examination by any qualified mental health professional and may include in their report any findings or observations made by that mental health professional. Section 2 also amends section 25-03.1-10 (on a matter unrelated to HIPAA) to require that any request for examination at the state hospital must be screened and approved by a regional human service center.

Section 3, which amends subsection 1 of section 25-03.1-13, clarifies that the legal counsel appointed to represent a person subject to a civil commitment proceeding "must have access" to the client's health information. (Because the disclosure is "required by law" it is permitted under the HIPAA privacy rule.)

Section 4, which amends section 25-03.1-43, simplifies the list of persons to whom the information and records obtained in the course of a civil commitment proceeding may be disclosed by specifying that this information may be disclosed (1) to a court as required to carry out the purposes of the civil commitment chapter, and (2) as authorized under the

HIPAA privacy rule. Disclosure under current law is similar to, but slightly different than, the disclosure authorized under the HIPAA privacy rule. Thus, to avoid unnecessary technical analysis in the case of each civil commitment proceeding, the standard specified in the federal privacy rule will be followed.

Section 5, which amends subsection 20 of section 43-17-31, clarifies that a physician may be subject to disciplinary action for the failure to transfer medical records to another physician or to supply a copy of the records to the patient, if the patient makes such a request ("except if the disclosure is otherwise limited or prohibited by law"). A reference to a Board of Medical Examiners rule relating to the transfer of psychiatric treatment records is repealed because the HIPAA privacy rule adequately covers this issue, and is "more stringent" (i.e., restrictive) with respect to the disclosure of "psychotherapy notes," thus superceding North Dakota law on this issue.

Section 6 repeals section 25-03.1-44 relating to "accounting" for the disclosure of individually identifiable health information about an individual who is the subject of a civil commitment proceeding. The HIPAA privacy rule contains detailed requirements on accounting for disclosure of health information. In addition, the state hospital and other providers will still be required to "chart" required information relating to the disclosure of a patient's health information.

Section 7 provides that this bill is an emergency measure.

Section 8 provides that the bill is effective April 14, 2003, which is the date on which all health plans and covered providers must be in compliance with the HIPAA privacy rule.

* * *

Chairman Lee, thank you for providing me an opportunity to discuss House Bill 1163, which clarifies the use and disclosure of protected health information in connection with a civil commitment proceeding. I will be pleased to answer any questions you or other members of the committee have regarding the bill, which we believe aligns North Dakota law with the federal HIPAA privacy rule, and in turn will assist providers, payers, and government agencies in achieving compliance with the privacy rule.

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Deanna Bell
Operator's Signature

10/2/03
Date

The HIPAA Privacy Rule: A Brief Overview

The Department of Health and Human Services (HHS) published the Privacy Rule, the STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION [45 CFR Parts 160 and 164], on December 28, 2000, and adopted modifications of the Rule on August 14, 2002.

The Privacy Rule establishes, for the first time, a foundation of Federal protections for the privacy of protected health information. The Rule does not replace Federal, State, or other law that grant individuals even greater privacy protections, and covered entities are free to retain or adopt more protective policies or practices.

The HIPAA Privacy Rule for the first time creates national standards to protect individuals' medical records and other personal health information.

- It gives patients more control over their health information.
- It sets boundaries on the use and release of health records.
- It establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information.
- It holds violators accountable, with civil and criminal penalties that can be imposed if they violate patients' privacy rights
- And it strikes a balance when public responsibility supports disclosure of some forms of data – for example, to protect public health.

For patients – it means being able to make informed choices when seeking care and reimbursement for care based on how personal health information may be used.

- * It enables patients to find out how their information may be used, and about certain disclosures of their information that have been made.
- * It generally limits release of information to the minimum reasonably needed for the purpose of the disclosure.
- * It generally gives patients the right to examine and obtain a copy of their own health records and request corrections.
- * It empowers individuals to control certain uses and disclosures of their health information.

For the average health care provider or health plan, the Privacy Rule requires activities, such as:

- Notifying patients about their privacy rights and how their information can be used.
- Adopting and implementing privacy procedures for its practice, hospital, or plan.
- Training employees so that they understand the privacy procedures.
- Designating an individual to be responsible for seeing that the privacy procedures are adopted and followed.
- Securing patient records containing individually identifiable health information so that they are not readily available to those who do not need them.

Responsible health care providers and health plans already take many of the kinds of steps required by the Rule to protect a patient's (or plan member's) privacy. The HIPAA privacy Rule requires formalization and documentation of these policies and procedures.

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38203.0101
Title.

Prepared by the Legislative Council staff for
Senator Fairfield
March 6, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1163

Page 2, line 8, remove "A request for examination at the state hospital must be screened and"

Page 2, line 9, remove "approved by a regional human service center."

Renumber accordingly

Page No. 1

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