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2386

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2386

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2386

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-31-05

Tape Number	Side A	Side B	Meter #
2	xxx		1460-3919
Committee Clerk Signature <i>Lisa Van Berkum</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2386. All Senators were present.

SB 2386 relates to denial of an application for an accident and health insurance policy.

Senator Tripplett, introduced the bill.

Senator Tripplett: This bill was introduced at the request of a constituent who had experienced the frustration of having her health insurance canceled and when she tried to find out why the information was withheld from her by her insurance company. This is a simple bill. It requires in most situations that an insurance company, a nonprofit health service corporation, or an HMO, provides notice to the customer of the reason for denial of coverage, a cancellation or non-renewal is the basis for the actual disease or medical condition. In those cases, privacy laws or HIPPA would prevent notification, the bill provides an alternate method of notification, for example the insurance company may refer the customer back to the physician who's report warranted the basis of the denial. With the high cost of medical care, most people feel they cannot afford to be without health insurance. If someone is denied coverage, it seems to me that

they should have an absolute right to know the reason for the denial so they can address the issue.

Then hopefully resolve it. You cannot fix the problem without being able to address it. I have discussed this issue with Rod St. Aubyn, he is aware of the particular issue that this bill stemmed from and I believe he will acknowledge it.

Chairman Mutch allowed opposition to be heard.

Rod St. Aubyn, Blue Cross, Blue Shield of North Dakota, spoke in opposition. See written testimony.

Senator Mathern interjects to state his support for the bill. See attached.

Rod then passed out an authorization form to each of the committee members. See attached.

Senator Fairfield : In your example of counseling due to past rape, past sexual abuse, those are considered things that would make the person deniable?

Rod: Yes. If there is a serious mental health issue, yes, a person can be denied.

Chairman Mutch : Then people who know they have problems, go get insurance, have the surgery done, and then drop the insurance.

Rod: There are provisions on there that prohibits that. Pre-existing is up to a year we can allow before someone is being covered.

The hearing was closed. No action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2386

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-31-05

Tape Number	Side A	Side B	Meter #
2		xxxx	652-1120
Committee Clerk Signature			

Minutes: **Chairman Mutch opened the hearing on SB 2386. Senators Espegard and Heitkamp were absent. SB 2386 relates to denial of an application for an accident and health insurance policy.**

Senator Klein moved to adopt amendments.

Senator Krebsbach seconded.

Roll Call Vote: 5 yes. 0 no. 2 absent.

Senator Klein moved a DO PASS AS AMENDED.

Senator Krebsbach seconded.

Roll Call Vote: 5 yes. 0 no. 2 absent.

Carrier: Senator Klein

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2386

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-31-05

Tape Number	Side A	Side B	Meter #
2		xxx	1149
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: **Chairman Mutch** opened the committee discussion on SB 2386. **Senators Espeguard and Heitkamp** were absent. SB 2386 relates to denial of an application for an accident and health insurance policy.

Senator Nething : This one, it seems to me, we really are treading a line on who we are helping and who we are not helping.

Chairman Mutch: I don't know if you can go back on a group if it is preexisting.

Senator Nething : At the state, every year, we have a time to make a decision or every two years.

Senator Fairfield : It does seem like theirs a devil to the details, but there should be some process for finding out.

Senator Nething : The federal law is making the world of health care nervous as cats.

Senator Fairfield : I am surprised that you can be denied for the reasons he stated that day. It seems like a disincentive to be forthright.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2386

Hearing Date 1-31-05

Senator Nething moved a DO NOT PASS.

Senator Klein seconded.

Roll Call Vote: 4 yes. 1 no. 2 absent.

Carrier: Chairman Mutch

Date: 1-31-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2386

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Nothing Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman	X		Senator Fairfield		X
Senator Klein, Vice Chairman	X		Senator Heitkamp	A	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	A				

Total (Yes) 4 No 1

Absent 2

Floor Assignment Mutch

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

REPORT OF STANDING COMMITTEE (410)
January 31, 2005 4:55 p.m.


Module No: SR-20-1499
Carrier: Mutch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2386: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO NOT PASS (4 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). SB 2386 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

SB 2386




Senate Bill 2386
Industry Business and Labor Committee
January 31, 2005

Chairman Mutch and Members of the Senate IBL Committee,

My name is Tim Mathern. I am the Senator from District 11 in Fargo and co sponsor of Senate Bill 2386 to address the problems that people have when denied insurance coverage.

Senator Triplett has done a great job explaining this. I am here to tell you that this problem came to my attention last year when people I knew were denied coverage. I drafted a bill and shared it with BCBS. Some changes were made to the bill draft to address the concerns they had.



Mr. Chairman and Members of the Committee, I look forward to hearing the further testimony, but I encourage you to set the policy that if people are denied coverage, they need to be informed of the reason. To do otherwise is to leave them in a situation of limbo as to what they can do to change the providers mind or to change a situation that may be standing in their way of getting coverage. I encourage a do pass recommendation on SB 2386.

Thank you.



Testimony on SB 2386
Monday, January 31, 2005
Senate Industry Business and Labor Committee

Mister Chairman and Committee Members, for the record I am Rod St. Aubyn, representing Blue Cross Blue Shield of North Dakota. We oppose this bill because it is unnecessary and because it forces insurance companies to disclose confidential and sensitive health information.

This issue was reported to us this summer by Sen. Mathern. On first glance, it made a lot of sense and we discovered some inadequacies within our current operational procedures. I want to thank and commend Sen. Mathern for bringing this to our attention. As a result, we established a work group within our company to try to accomplish what the bill proposes.

To fully understand the situation requires some background information. Group insurance offered by employers is "guaranteed issued", that is, individual employees can not be denied coverage based on health status, etc. In the individual market, the applicant must medically qualify. The applicant can be a single, single with dependent(s), or an entire family. During the medical underwriting process, research is done on information supplied by the applicant, past claims history if the applicant is a former BCBSND member, and records supplied by medical providers. If it is determined that the applicant is a high medical risk, insurers are allowed to deny coverage to the applicant(s). A denied applicant is then eligible for the State's high risk product called CHAND.

Typically, if the applicant self reports medical conditions on the application (see Section 5 of the application), medical records are requested by the appropriate medical provider. Let's use the example of depression (#18). In this example, let's say an individual has been diagnosed for mild depression after the death of a family member. The medical records indicate that medication has been prescribed and the medical condition is very controllable and appears to be situational. In this case, the individual would probably **not** be denied. However, let's take the case of an individual who has severe depression, has been hospitalized 3 times during the past year, and appears to refuse to maintain their medication regimen. In this case, the applicant would probably be considered high risk and would probably be denied coverage and then informed of options under CHAND. The purpose of this is to make individual coverage affordable. If they were all guaranteed issue, the costs would be significantly higher, because the high risk individuals would dominate the insurance pool, forcing out the young and healthy because of the higher costs. The CHAND program is subsidized by all health insurers in the state in the amount of \$3,500,000 - \$5,000,000 each year.

It is assumed that this bill only affects these individual health plans, even though it does not specifically specify this. When someone is denied coverage, typically a letter is sent to the applicant, but minimal information was given for the reason for denial. It generally was stated based on medical determinations. However, after Senator Mathern's inquiry, our work group determined that more information **should** be supplied. However, this

ended up being a more complex issue than first thought. Because of HIPAA regulations we would need to get authorizations from each applicant and dependent to allow us to share the reason with the primary applicant. Secondly, we would need another authorization to allow the medical provider to release medical information to our company for the medical underwriting process for this application. There are some special State and Federal laws that can be more stringent than HIPAA. Those laws required our authorization to specifically identify those areas.

Then we ran into the situation where we have identified issues in the past in which the applicant was not yet aware of (early indication of the possibility of cancer), because of a timing issue between our underwriting process and when the applicant actually had an appointment with a provider.

We have also had many other very sensitive issues which we had to address in our work group. Some of those issues involved:

1. HIV treatment and diagnosis
2. STD treatment and diagnosis
3. Counseling due to a past rape.
4. Alcohol and substance abuse treatment
5. False positive PAP readings
6. Counseling due to past sexual abuse

Our work group decided to have a different system to address some of these sensitive denials. We will inform the applicant that they have been denied based on medical information received from a specified provider and give a specific service date. That same information is shared with the provider, so he/she is not confused by the patient's inquiries. We do not feel that it is the insurer's responsibility to discuss private medical information with an applicant. That is best left with the physician.

We have made significant changes to our system as a result of Sen. Mathern's initial question. We are currently in the process of implementing those changes to our system and are on schedule for computer programming modifications to incorporate these changes.

However, this bill opens the door to many more questions and concerns which would have to be addressed.

What process will be required in the notification (i.e., format, mailing requirement (certified?), etc.

What is the penalty and remedy for violation?

On line 8, we do not, and I'm not sure that you can legally cancel or fail to renew a policy on the basis of disease or medical condition, unless the applicant falsifies their application (i.e. states they have no cancer, but we later find out that he/she has been

treated for cancer for the past 2 years. These are called misrepresentations, and we deal with these on a regular basis. Are these being denied due to a medical condition or due to misrepresentation of the application? As a result, would our process require us to follow this process or our current process for misrepresentations?

On line 9, who is the "individual applicant" and "individual insured" in an application for coverage of a family?

On lines 6, 8, 10 and 11 it refers to the term "basis", which would be interpreted as the medical underwriting policy. That is confidential and proprietary. I think if this bill is approved this term should be replaced by the word "reason".

On line 14, I'm not sure why this includes the terms "group, blanket, franchise, or association basis." If it is a self-funded group, it is exempt from state requirements and group coverage is "guaranteed issue" and not subject to denial for medical reasons.

In our research, we could not find any other state or other Blue Cross Blue Shield plans which had this type of requirement. As I indicated, our internal work group has already taken this project on and is in the process of implementing changes to accomplish the intent of this legislation. With additional computer programming changes left to be done, we think we can accomplish this task before this law would be implemented. However, I would doubt that other companies would be in compliance with this requirement by August 1. If we require this for others, it may have an unintended consequence of discouraging other companies from doing business in ND.

We are not sure how our applicants are going to react to the additional paperwork required (authorization forms etc.), nor the reaction of medical providers when they get more inquiries on sensitive diagnoses.

For all the reasons I have explained, I feel this legislation is unnecessary. We would urge you to defeat this bill. I would be willing to try to ~~explain~~ answer your questions.

answer

Rod St. Aubyn

Authorization for Release of Medical Information to Primary Applicant

Instruction to Applicants: This form authorizes disclosure to the primary applicant of medical information used in pre-enrollment underwriting or risk-rating or to determine eligibility for enrollment in or benefits under a health plan.

Each individual age 12 and over, for whom the primary applicant is applying for health plan coverage, must sign this authorization. If a legal representative signs this authorization on behalf of an individual, include a copy of the power of attorney or other relevant document evidencing the authority to represent the individual.

By signing this form, I authorize the use and disclosure of the medical information described below for pre-enrollment underwriting or risk-rating of health insurance coverage or to determine eligibility for enrollment or benefits under a health plan. I authorize BCBSND to disclose such medical information and records to the primary applicant as may be needed to explain its underwriting decision.

I understand that this authorization applies to use and disclosure of medical information and records that may relate to sexually transmitted disease, use of contraceptives, prenatal care, termination of pregnancy, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV), treatment for alcohol or drug abuse, and receipt of behavioral or mental health services.

Primary Applicant's Name: _____

Birth Date: _____ Signature: _____ Date: _____

Spouse and Dependent Children over Age 12

Spouse's Name: _____ Birth Date: _____

Signature: _____ Date: _____

Dependent's Name: _____ Birth Date: _____

Signature: _____ Date: _____

Dependent's Name: _____ Birth Date: _____

Signature: _____ Date: _____

Dependent's Name: _____ Birth Date: _____

Signature: _____ Date: _____

Dependent's Name: _____ Birth Date: _____

Signature: _____ Date: _____

Personal Representative

If a legal representative (Power of Attorney or Legal Guardianship) signs this authorization on behalf of an individual, include a copy of the power of attorney or other relevant document evidencing the authority to represent the individual:

Representative's Name: _____

Individual(s) Represented: _____

Relationship to Individual(s) Represented: _____

You are entitled to a copy of this authorization after you sign it.

Rod St. Aubyn

Authorization for Enrollment or Eligibility

Instruction to Applicants: This form authorizes disclosure to us of the medical information described below of the primary applicant and (if applicable) members of the primary applicant's family for use in pre-enrollment underwriting or risk-rating or to determine eligibility for enrollment in or benefits under a health plan.

Each individual age 12 and over, for whom the primary applicant is applying for health plan coverage, must sign this authorization. A parent may sign this authorization on behalf of a child under age 12. If a legal representative signs this authorization on behalf of an individual, include a copy of the power of attorney or other relevant document evidencing the authority to represent the individual.

By signing this form, I authorize the use and disclosure of the medical information described below for pre-enrollment underwriting or risk-rating of health insurance coverage or to determine eligibility for enrollment or benefits under a health plan. I understand that this authorization is a condition of enrollment in or eligibility for benefits under a health plan for myself and (if applicable) my spouse and my dependent children. If I or (if applicable) my spouse or my dependent children decline to sign this authorization, enrollment in a health plan may be denied.

I hereby authorize _____

who has advised, treated, attended or provided care or service to me, my spouse or my dependent children or is in possession of any medical information and records (e.g., chart notes, lab/path reports, radiology reports) regarding me, my spouse or my dependent children, to furnish such medical information and records covering the last 5 years to Blue Cross Blue Shield of North Dakota (BCBSND).

I understand that this authorization applies to use and disclosure of medical information and records that may relate to sexually transmitted disease, use of contraceptives, prenatal care, termination of pregnancy, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV), treatment for alcohol or drug abuse, and receipt of behavioral or mental health services.

I understand that if the recipient of this medical information is not a health care provider or health plan covered by federal privacy regulations, this medical information may be re-disclosed and no longer protected by these federal regulations. BCBSND is subject to federal privacy regulations and will not re-disclose this medical information except as allowed by law.

I understand that I have the right to revoke or end this authorization at any time. I understand that in order to revoke this authorization I must do so in writing to BCBSND. I understand that my revocation of this authorization will not affect any action that has been taken, or any medical information that has already been used or disclosed, based upon this authorization before BCBSND actually received my revocation.

This authorization will remain in effect for the earlier of 12 months from the date of signature or the earlier date entered here: .

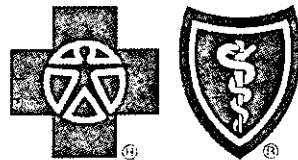
I have had full opportunity to read and consider the contents of this authorization. I understand that, by signing this form, I am authorizing the use and/or disclosure of medical information as described in this form. I agree that a copy of this Authorization shall be as valid as the original.

Primary Applicant's Name: _____ Maiden Name: _____

Birth Date: _____ Signature: _____ Date: _____

Contact Blue Cross/Blue Shield
for copy —

Individual Membership Application



**BlueCross BlueShield
of North Dakota**

An independent licensee of the Blue Cross and Blue Shield Association

submitted By Rod St. Aubyn