2011 SENATE HUMAN SERVICES

SB 2084

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

2084
1-10-2011
12696

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the orders for individuals with tuberculosis.

Minutes: Attached testimony

Senator Judy Lee opened the hearing on SB 2084.

Kirby Kruger, director of the Division of Disease Control and section chief of the Medical Services Section for the ND Department of Health, testified in support of SB 2084. Attachment #1.

Dr. John Baird, Health Officer for Fargo Cass Public Health, testified in support. See attachment #2.

Senator Tim Mathern asked if they had considered just eliminating the entire section. He was wondering why they don't address it in the more generic section of the Century Code about any communicable disease.

Dr. Baird answered that tuberculosis is a little different because of its long treatment and the fact that it isn't infectious for much of the course of treatment. If a person stops treatment, it becomes worse. It's difficult to tie that language into the communicable disease confinement statute as it now stands.

Senator Tim Mathern asked what happens if a communicable disease comes upon us that has stages of being infectious or not and if we should be looking at laws that address any new diseases.

Dr. Baird replied that the communicable disease confinement procedure does address that issue fairly well.

Senator Judy Lee asked what is different in the communicable disease confinement procedures statute compared to the tuberculosis one.

Dr. Baird said that, in general, it mostly talks about when someone is infectious. It is more specific.

There was no opposing testimony.

There was no neutral testimony.

The hearing on SB 2084 was closed.

Senator Spencer Berry moved a **Do Pass on SB 2084**.

Seconded by **Senator Dick Dever**

Roll call vote 5-0-0. Motion carried.

Carrier is **Senator Spencer Berry**.

Date: 1-10-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2084

Senate **HUMAN SERVICES** 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 **Sen.** Berry Seconded By **Sen.** Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Berry

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

REPORT OF STANDING COMMITTEE

SB 2084: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2084 was placed on the Eleventh order on the calendar.

2011 HOUSE HUMAN SERVICES

SB 2084

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2084
February 15, 2011
Job # 14554

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to orders for the treatment of individuals with tuberculosis.

Minutes: Testimony # 1 & 2

Chairman Weisz: Opened the hearing on SB 2084.

Kirby Kruger, Director of the Division of Disease Control, chief of the Medical Services Section of the ND Department of Health: (See testimony #1). Basically what we did is we had a law in place called a confinement law and was written back in 2003 and it was a model code and we did not see a need to have a separate confinement procedure for tuberculosis and that was probably one of the biggest things we did here.

Chairman Weisz: In the confinement section there is still the ability to appeal the order.

Kirby Kruger: The confinement law does have a due process procedure in there.

Doctor John Baird, Health Office for Fargo Case Public Health: (See testimony #2).

Opposition: None

Hearing closed.

Do Pass Motion Made by Rep. Paur: Seconded By Rep. Danschen

Discussion:

Rep. Hofstad: Under the penalty do we have any exceptions for religious exceptions under the penalty phase of this? Generally in statue do we have any medical exceptions for people that refuse to take our care?

Chairman Weisz: I suppose they can still be confined. I suppose they don't have to except treatment but they would be confined so they don't infect someone else. They can go to court on it.

Rep. Hofstad: It looks to me like it isn't only confinement; it is also undertaking a medically approved course of treatment.

Rep. Porter: That is correct. Then the due process portion in 23-07.6 is where they would have the right to go in front of a court and basically state their objections to the course of treatment that has been subscribed. In the meantime it would allow the local health officer to institute the confinement for sure and the appropriate treatment. Then that person would have the due process to follow to say I don't want that treatment. It is against my religion to take antibiotics or whatever their objection would be. Then the courts would have to rule in on that and make the determination of whether or not the person is a public health risk and if they are going to allow them to be either at home and confined as a public health risk with or without treatment and for what length.

Rep. Hofstad: So the due process is 23-07.6?

Chairman Weisz: One needs to be clear that they can't force the medically approved course of treatment under the first part of the confinement. Under the first part of the confinement it says voluntarily and if they decline then they can be confined under that section. That section says strictly confinement and then it talks about their rights and the place and then there is a court hearing if they want to appeal it. At that point they could make their argument that they don't want to take for religious reasons the medically approved course of treatment. Both the state health and public health give that order for confinement. The illness is actually on the health department or the local public health to show the court that they need to be confined. Even if there is an order also it is inerrant in 23-07 that the person may have had the confinement order at any time can request a modification of that order or a termination of that order.

Rep Devlin: Page 3, line 15 and 16; what happens if there is not a state health officer. How is that delegated then? If the local public health has the situation where something should be done and for whatever reason we don't have a state health officer I am not sure how that is handled in law anywhere.

Chairman Weisz: It says it may be implemented by a local health officer with the approval of the state health officer.

Kirby Kruger: If the health officer's position is vacated generally the governor has named an interim health officer. Since I have been with the department since 1989 we have always either had a health officer or an interim health officer filling that position. That is how it has been handled in the past.

Vote: 13 Yes 0 No 0 Absent Carrier: Rep. Paur

Hearing closed.

Date: 2-15-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2084

House HUMAN SERVICES 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. Paur Seconded By Rep. Damschen

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. Paur

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

REPORT OF STANDING COMMITTEE

SB 2084: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2084 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2084

#1

Testimony
Senate Bill 2084
Senate Human Services Committee
January 10, 2011; 10:30 a.m.
North Dakota Department of Health

Good morning, Madam Chair and members of the Human Services Committee. My name is Kirby Kruger, and I am the director of the Division of Disease Control and section chief of the Medical Services Section for the North Dakota Department of Health. I am here today to testify in support of Senate Bill 2084 and to provide information that may be helpful as you deliberate this bill.

Tuberculosis (TB) continues to be a significant public health concern worldwide, nationally and in North Dakota. The World Health Organization estimated that 9.4 million new cases of TB and 1. 3 million deaths occurred worldwide in 2009. In the United States, 11,545 cases of TB were reported that same year, 18 of which were multidrug-resistant TB. In North Dakota from 2005 to 2009, 31 cases of TB were reported, ranging from a low of three to a high of 10 per year. Fortunately, no cases of multidrug-resistant TB or extensively drug-resistant TB have been reported in North Dakota in the last five years.

Preventing the spread of TB is important in order to reduce the severe health outcomes that are associated with TB, including death. Preventing the development of tuberculosis that is resistant to TB medication is important in limiting the complexity of treatment with alternative drugs, keeping the costs associated with treatment as low as possible and preventing the emergence of TB that cannot be treated with medications.

Senate Bill 2084 is a rewrite of NDCC 23-07.1 – Tuberculosis Treatment. In general, Senate Bill 2084 does the following:

1. Removes the statement of legislative intent from the tuberculosis statute to be consistent with current bill-drafting practices of the Office of the Legislative Council.
2. Revises the tuberculosis statute to make it more consistent with current public health practice and emerging concerns regarding the control of TB.
3. Includes additional definitions to better clarify stages of tuberculosis and to clearly define a "substantial threat to the public health" to be consistent with the confinement statute (23-07.6)

4. Removes confinement procedures from the tuberculosis statute, where they have been difficult to understand and apply, and refers instead to the Communicable Disease Confinement Procedure (23-07.6), which provides clear procedures and due process for the individual being confined.

Specifically, Senate Bill 2084 repeals the following sections:

- 23-07.1-01 – Legislative intent
- 23-07.1-06 – Physician's examination – findings – final order
  - ➢ This is covered, in part, by language found in 23-07.1-05 and 23-07.6

Senate Bill 2084 also repeals the following sections that are covered by the confinement statute (23-07.6):

- 23-07.1-07 – Sheriff's execution of state health officer's final order
- 23-07.1-08 – Hearing – order
- 23-07.1-09 – Appeal to supreme court – habeas corpus – hearing
- 23-07.1-10 – Discharge – release
- 23-07.1-11 – Liability of officers
- 23-07.1-12 – Confinement exceptions – quarantine

Senate Bill 2084 also updates the following definitions in 23-07.1-01:

- **Appropriate facility** (page 1, line 12) – "person's" changed to "individual's"
- **Department** (page 1, line 15) – "health boards" changed to "health units"
- **Medically approved course of treatment** (page 1, line 21) – "and approved by the department" was added to the definition. This was added to give the department authority to help ensure that treatment will result in the greatest chance of curing the disease and the least chance of developing TB that is resistant to anti-TB drugs. Because TB cases are not very common, this will help ensure that health-care providers with limited experience treating TB will receive the most up-to-date recommendations for treatment.
- **Tuberculosis** (page 2, lines 12 and 13) – "Infectious tuberculosis, suspect tuberculosis, noninfectious tuberculosis and any other case" was added to the definition to clarify that TB could mean any of these forms. "Person's" was changed to "individual's."

- The following new terms were added and defined:
  - **Infectious tuberculosis** (page 1, lines 16-19) was added to define when a person can transmit TB to another person.
  - **Noninfectious tuberculosis** (page 1, lines 23-24, page 2, lines 1-3) was added to define when a person has TB but is not capable of transmitting TB to another person.
  - **Substantial threat to public health** (page 2, lines 4-7) was added to define when a person is considered to present a risk to the general public either because of transmission of disease or because of the risk of developing TB that is resistant to one or more of the anti-TB medications, or both. This phrase also makes the language consistent with 23-07.6 – Communicable Disease Confinement Procedures.
  - **Suspect tuberculosis** (page 2, lines 8-11) was added to define when a person is likely to have TB in the absence of conclusive laboratory evidence.

Other notable changes in Senate Bill 2084 include:

- 23-07.1-05 (page 2, lines 18 through 31; page 3, lines 1 through 16).
  - Provides authority to the state health officer to investigate suspected TB or exposure to TB. Offers the case or suspect case a chance to comply voluntarily with evaluation, treatment and care. Provides the authority for the state health officer, in cases where the suspect case is noncompliant, to enact the communicable disease confinement procedures found in 23-07.6. These changes will help us investigate, provide adequate treatment and prevent further spread of TB.
  - Provides authority to the state health officer to investigate TB and to conduct screening programs to help identify individuals with the disease.
- 23-07.1-15 (page 3, line 24) adds the terms "infectious or suspect" TB cases to the penalty section of the law to help prevent further spread of the disease.

Finally, the department worked with Dr. John Baird, the health officer for Fargo-Cass Public Health, and with the Association of Counties to rewrite this statute. Local public health and several infectious disease specialists were offered a chance to comment, and no comments have been received as of today.

This concludes my testimony. I am happy to answer any questions you may have.

#2

Testimony
Senate Bill 2084
Senate Human Services Committee
Monday, January 10, 2011; 10:30 am

Good morning, Madam Chair and members of the Senate Human Services Committee. My name is Dr. John Baird, and I am Health Officer for Fargo Cass Public Health. I am here today to testify in support of Senate Bill 2084 which revises North Dakota Century Code Chapter 23-07.1 relating to orders for the treatment of individuals with tuberculosis.

In the history of North Dakota tuberculosis (TB) has been a significant public health problem. A century ago tuberculosis was one of the most common causes of death in our state, with 200 deaths from TB reported in 1914. At one time the standard of treatment was isolation of individuals and confinement at our state sanatorium in San Haven. With the development of anti-tuberculosis medications and good treatment we now have only 3 to 10 cases of tuberculosis a year in North Dakota. Worldwide, however, TB continues to be one of the deadliest diseases with one third of the world's population estimated to be infected with tuberculosis.

Treatment of tuberculosis can be complicated involving multiple medications and a long course of treatment, from 6 to 12 months. The modern approach to TB is targeted testing of high risk populations and treatment with directly observed therapy, closely monitoring infected individuals to assure completion of an approved course of treatment. If infected individuals interrupt their therapy, stopping and starting medications, the tuberculosis bacteria have an opportunity to develop resistance to the medications. Multi-drug resistant and extensively drug-resistant tuberculosis is becoming more common in the country and in the world making control measures even more difficult.

Having a state law concerning the treatment of tuberculosis is very appropriate to protect the public from the spread of this infectious disease. NDCC 23-07.1 has good intent, but it requires some updating of language and procedures to bring it in line with modern practice. As local health officer in Fargo I have had one occasion to use this statute to confine an individual who was not compliant with treatment and posed a risk to the public's health. The procedures of the tuberculosis treatment law were not easy to follow and were confusing even for the judge who presided over the confinement hearing. We did have some missteps in how the case was handled, but ultimately we successfully treated this individual.

Since the time the tuberculosis treatment chapter was originally written, the North Dakota Century Code now has Chapter 23-07.6 which addresses communicable disease confinement procedures. It is well written and a model law for instituting quarantine or isolation procedures to protect the public from communicable diseases. It includes well outlined procedures and provides due process to protect an individual's rights. It is redundant and confusing as to which chapter of our state law to use when needing to confine an individual with tuberculosis who poses a risk to the public. The changes to the tuberculosis treatment chapter proposed in Senate Bill 2084 improve definitions of important terms and meshes isolation procedures with the communicable disease confinement chapter.

I would like to mention a little more detail about several of the changes proposed in this bill:

Section 1 – Definitions.

3. "Infections tuberculosis" or tuberculosis disease is what most people most often think of when TB is mentioned. It is an actively growing bacterial infection, most often in the lungs, but also capable of growing in other organs. If bacteria from an infected person can possibly be spread to another then it is infectious TB.

4. Monitoring for improvement from therapy or for progression from latent TB to tuberculosis disease is an important part of treatment. Treatment regimens can be rather complicated with drug resistance, co-infections, and other health problems. With so few cases in the state, experience and familiarity with the latest treatments varies. The health department is able to examine all cases in the state and often consults with regional and national experts to decide on exact treatment regimens.

5. "Latent TB infection" is the most common stage of tuberculosis we see in the state. When someone is first exposed to tuberculosis they can develop an infection that their body walls off and controls. The individual will test positive for tuberculosis, but will not be able to spread the infection. Treatment may be appropriate to eliminate any tuberculosis bacteria from the body or else periodic monitoring should be done to watch for progression to tuberculosis disease.

6. "Substantial threat to the public health" is a phrase that is used in the communicable disease confinement chapter and helps tie this chapter into that one. Tuberculosis is somewhat different from other communicable diseases due

to its long treatment regimen. An individual may not be infectious after a few weeks of treatment, but if they stop therapy they would become infectious again and potentially develop drug resistant bacteria becoming an even greater risk to the public. Completing the course of therapy is critical for them to no longer be a threat to the public health.

Section 2 – Reports – Orders for the custody of individuals.

1. Tuberculosis is a disease reportable to the state health officer. The changes in this paragraph set the authority to investigate exposures to tuberculosis. If an individual has infectious or suspect tuberculosis and refuses treatment the procedures in chapter 23-07.6 are used to isolate the individual to protect the public from exposure.

2. The state health officer is given authority to determine the sources of tuberculosis.

3. Screening programs may be conducted of populations at increased risk of tuberculosis.

When I used the tuberculosis treatment law to confine the individual who was not compliant with treatment and posed a risk to the public's health I was assisted in the legal proceedings by the Cass County States Attorney's office. We kept the States Attorneys informed of our recommendations. Aaron Birst from the Association of Counties worked with Kirby Kruger, the state health department tuberculosis program staff, the Attorney General's Office and myself to draft this bill.

Madam Chair, members of the committee, this concludes my testimony. I am happy to answer any questions you may have.

#1

Testimony
Senate Bill 2084
House Human Services Committee
February 15, 2011; 9:15 a.m.
North Dakota Department of Health

Good morning, Chairman Weisz and members of the Human Services Committee. My name is Kirby Kruger, and I am the director of the Division of Disease Control and section chief of the Medical Services Section for the North Dakota Department of Health. I am here today to testify in support of Senate Bill 2084 and to provide information that may be helpful as you deliberate this bill.

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#2

Testimony
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House Human Services Committee
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to its long treatment regimen. An individual may not be infectious after a few weeks of treatment, but if they stop therapy they would become infectious again and potentially develop drug resistant bacteria becoming an even greater risk to the public. Completing the course of therapy is critical for them to no longer be a threat to the public health.

Section 2 – Reports – Orders for the custody of individuals.

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Chairman Weisz, members of the committee, this concludes my testimony. I am happy to answer any questions you may have.