

2015 HOUSE HUMAN SERVICES

HB 1099

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

1099
1/13/2015
21901

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to public safety emergency suspension of chiropractors.

Minutes:

Attachment #1

Chairman Weisz: opened the hearing on HB 1099.

Dr. Carol Winkler: Represented ND Board of Chiropractic Examiners. (See Testimony #1)

Rep. Fehr: Is teaching educational? Is that specifically within your scope of practice? And if not, do you need that?

Dr. Winkler: This is an exemption so that a chiropractor that does not have licensure but is in an educational setting is exempt from obtaining a license to come and teach.

Rep. Fehr: Is educational and teaching within the scope of practice?

Dr. Winkler: It is not within our scope of practice in the State of North Dakota but what we are trying to do is safeguard any kind of malpractice situation. A lot of malpractice insurances are void if you do not have a license where the malpractice occurred. That is very unlikely to happen but there is a potential.

Rep. Porter: If it is an emergency suspension, you are allowed to close that person's business down. Is 21 days reasonable to give due process to defend themselves? I look at it as more of a 10-day thing because you are affecting someone's livelihood.

Dr. Winkler: The 21 days is the burden of the board. That may happen in less time. The board doesn't have the ability to wait for a month. The idea behind this would be extreme fraud or sexual misconduct. At this point we have nothing that allows us to make an immediate action.

Rep. Porter: I think 21 days is too long for an emergency situation.

Dr. Winkler: The legal system does not happen within five days. I agree with what you are saying, but we have to draw a line in the sand somewhere.

Chairman Weisz: On that provision you can suspend for 60 days. The hearing is held within 21 days but doesn't mean you have to make a decision. The board has 60 days to make a decision after you have the hearing.

Dr. Winkler: That is correct initially. The board would generally move to hurry in area.

Chairman Weisz: On page 3 where you eliminate the twice-yearly examination, are they doing that online and it can be done at any time?

Dr. Winkler: That examination was when people actually sat for an exam. What the board does now is accept the national exams. They do meet with new licensees twice a year for jurisprudence reasons.

Rep. Seibel: If you have 21 days to have the hearing, would a 30-day suspension make more sense to make sure the board acts within 9 days after that hearing? Our attorney should answer that question and I could bring him down here.

Rep. Muscha: You said you modeled this after medical language. Are those numbers the same?

Dr. Winkler: Yes.

Dr. Fehr: Something of this size won't be finished in 21 days.

Dr. Winkler: Let us take a sexual misconduct that would harm the public. This says you can't see patients and we have a time frame within which we need to organize to be fair to them and to protect the public. Nothing is simple or quick.

Rep. Porter: Inside the board of medical examiners system there is a procedure that allows the physician the right to district court. Inside of your procedure there isn't anything that is written that allows them to vacate your proceedings and head to district court. Is there a reason why that is missing?

Dr. Winkler: No. In looking at the model practice acts that exist nationally on the chiropractic level, we would be safe with this knowing the intent of our board. We felt this was less complicated.

Rep. Porter: So there are components within the licensing of physicians that you are referencing. You picked this language and left out a couple of components.

Dr. Winkler: Yes. We didn't do it to make it appear as though we are trying to be the almighty board and cheat our practicing licensee.

Rep. Porter: It does. I try to have consistency with the boards so we give people the due process. I look for the number of days and availability to appeal to district court. There are some components missing in this.

No Opposition

Chairman Weisz: Closed the hearing

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1099
1/21/2015
Job Number: 22327

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Chairman Weisz: took up HB 1099. I think we had some cleanup on section 12 emergency suspension. Testimony that was from the medical examiners was the only major change.

Rep. Rich Becker: Comments that Representative Porter had several concerns but doesn't know what they are.

Rep. Oversen: as she recalls, Representative Porter's concerns were with last portion of the bill, Ascension and how it affects the practitioner & their business.

Chairman Weisz: We will hold off in case Rep. Porter has some concerns.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

HB 1099
1/26/2015
Job # 22537

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Attachment # 1

Chairman Weisz: took up HB 1099. Rep. Porter had amendments handed out.

Rep. Porter: Asks Austin to explain how they work.

Austin Lafferty Legislative Council: First section under section 12 in the first paragraph language has been modified. Language is still being left in on page 7.

Rep. Porter: Replace physician with Chiropractor. The way it reads in subsection 3 of the amendments you need sub 2 on page 7, as it talks about the hearing process in subsection 3. Leave it at 21 days and leave it verbatim out of the board of medical examiners component. Section 12 would be replaced with the proposed language. (attachment #1)

Rep. Fehr: An ultimate word would be licensee instead of chiropractor.

Rep. Mooney: proposes to keep language similar to keep things consistent.

Rep. Porter: Moves to replace physician with chiropractor on the amendment.

Chairman Weisz: Lines 1-6 on page 7 would be replaced with the proposed amendment replace physician with chiropractor.

Rep. Porter makes the motion to replace the proposed amendment Mooney Seconds the motion. Motion carries.

Rep. Oversen moves to add a line after line 27 that has code # 43-06-17.1 Temporary suspension - appeal.

Rep. Fehr seconds it. Motion is carried.

Rep. Mooney motions to pass 1099 as amended.

Rep Fehr seconds it.

House Human Services Committee
"Click here to type Bill or Resolution Number"
"Click here to type date"
Page 2

Do Pass as Amended. Yes 12 No 0 Absent 1.

Rep Mooney Carries the Bill

SAC
1-26-15

January 27, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1099

Page 1, line 2, replace "public safety emergency" with "temporary"

Page 1, line 2, after "suspension" insert "and appeal"

Page 6, line 28, replace "**Public safety emergency**" with "**Temporary**"

Page 6, line 28, after "**suspension**" insert "**- Appeal**"

Page 6, line 29, remove "Without a hearing, the board may immediately suspend a chiropractic license for not"

Page 6, replace lines 30 and 31 with "If based on verified evidence the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the chiropractor would create significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the chiropractor's license is required to reasonably protect the public from the risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension of the chiropractor, which must include a copy of the order and complaint, the date set for a full hearing, and, upon request, a specific description of the nature of the evidence, including a list of all known witnesses and a specific description of any documents relied upon by the board in ordering the temporary suspension must be made available to the chiropractor."

Page 7, line 1, remove "A summary suspension takes effect upon written notice to the chiropractor specifying"

Page 7, replace lines 2 through 6 with

"An ex parte suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.

3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, will be taken against the chiropractor who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The chiropractor is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The chiropractor may appeal the ex parte temporary suspension order before the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempt record as defined in section 44-04-17.1."

Renumber accordingly

Date: 1-26-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1099

House Human Services Committee

Subcommittee

Amendment LC# or Description: Porter amendment

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Porter Seconded By Mooney

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. Mooney		
Vice-Chair Hofstad			Rep. Muscha		
Rep. Bert Anderson			Rep. Oversen		
Rep. Dick Anderson					
Rep. Rich S. Becker					
Rep. Damschen					
Rep. Fehr					
Rep. Kiefert					
Rep. Porter					
Rep. Seibel					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*motion carried corrected
physician to chiropractor
all language in Sec 1 2
line 28-31
pg. 1-6
Dial 1-6*

Date: ~~1/24/2015~~ 1/26/2015
 Roll Call Vote # 2

2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1099

House Human Services Committee

Subcommittee

Amendment LC# or Description: See bottom description

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Oversen Seconded By Lehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz			Rep. Mooney		
Vice-Chair Hofstad			Rep. Muscha		
Rep. Bert Anderson			Rep. Oversen		
Rep. Dick Anderson					
Rep. Rich S. Becker					
Rep. Damschen					
Rep. Fehr					
Rep. Kiefert					
Rep. Porter					
Rep. Seibel					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
~~line 28~~
 add line after 27
 temporary suspension

Date: 1-26-15
 Roll Call Vote #: 3

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1099**

House Human Services Committee

Subcommittee

Amendment LC# or Description: LC 15.8020.01001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Mooney Seconded By Fehr

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter	✓				
Rep. Seibel	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Mooney

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

REPORT OF STANDING COMMITTEE

HB 1099: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1099 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "public safety emergency" with "temporary"

Page 1, line 2, after "suspension" insert "and appeal"

Page 6, line 28, replace "**Public safety emergency**" with "**Temporary**"

Page 6, line 28, after "**suspension**" insert "**- Appeal**"

Page 6, line 29, remove "Without a hearing, the board may immediately suspend a chiropractic license for not"

Page 6, replace lines 30 and 31 with "If based on verified evidence the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the chiropractor would create significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the chiropractor's license is required to reasonably protect the public from the risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension of the chiropractor, which must include a copy of the order and complaint, the date set for a full hearing, and, upon request, a specific description of the nature of the evidence, including a list of all known witnesses and a specific description of any documents relied upon by the board in ordering the temporary suspension must be made available to the chiropractor."

Page 7, line 1, remove "A summary suspension takes effect upon written notice to the chiropractor specifying"

Page 7, replace lines 2 through 6 with

"An ex parte suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.

3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, will be taken against the chiropractor who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The chiropractor is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The chiropractor may appeal the ex parte temporary suspension order before the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempt record as defined in section 44-04-17.1."

Renumber accordingly

2015 SENATE HUMAN SERVICES

HB 1099

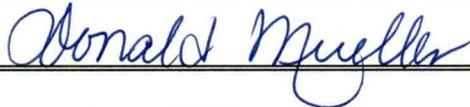
2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

HB 1099
3/10/2015
24568

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to the practice of chiropractic

Minutes:

Attach #1: Testimony by Dr. Carol Winkler

Dr. Carol Winkler, representing the North Dakota Board of Chiropractic Examiners, testified for HB 1099 (attach #1) (ends 3:55)

Chairman Judy Lee asked if the board is comfortable with the amendments from the House.

Ms. Winkler responded that they are satisfied.

Senator Howard Anderson, Jr. when you say in your training programs, that four equivalent language you use, if you have two competing entities that were accrediting programs, you could find people on both sides that would say they are not equivalent. Are you comfortable that this will work for you?

Ms. Winkler responded we are. People trained outside of the United States call things with the exact same education a different name. They have legal problems when they come from out of the United States. We have not had the issue in North Dakota, but with mobility in the western part of the state, it could happen.

Chairman Judy Lee this gives the board the latitude to review and make the decision for equivalency.

Ms. Winkler confirmed.

V. Chairman Oley Larsen asked where is the popular place for out of state training. Sometime back medical folks wanted to go to Grenada. Where is it for chiropractic?

Ms. Winkler there are areas in Canada, Asia, New Zealand, Australia, England, South Africa. Many stay and practice there but many want the American dream.

Senate Human Services Committee
HB 1099
03/10/2015
Page 2

OPPOSITION TO HB 1099
No opposing testimony

NEUTRAL TO HB 1099
No neutral testimony

Closed Public Hearing.

Senator Howard Anderson, Jr. moved a DO PASS for HB 1099. The motion was seconded by **V. Chairman Oley Larsen**. No discussion.

Roll Call Vote
6 Yes, 0 No, 0 Absent. Motion passes.

V. Chairman Oley Larsen will carry HB 1099 to the floor.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1099**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Anderson Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	✓		Senator Tyler Axness	✓	
Senator Oley Larsen (V-Chair)	✓		Senator John M. Warner	✓	
Senator Howard C. Anderson, Jr.	✓				
Senator Dick Dever	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Larsen

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

REPORT OF STANDING COMMITTEE

HB 1099, as engrossed: Human Services Committee (Sen. J. Lee, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1099 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1099

1/13/15

1099

#1

Good Morning Mr. Chairman and members of the House Human Services committee,

My name is Dr. Carol Winkler and I am here representing the North Dakota Board of Chiropractic Examiners in testimony of HB 1099. I practice here in Bismarck, and have served the board from 2003 to 2013. I currently serve as a district director for the Federation of Chiropractic Licensing Boards on a national level. There are currently 397 actively practicing chiropractors in the state of North Dakota. The board has a proposed budget of about \$100,000 for the 2015 fiscal year. This bill cleans up antiquated language, removes outdated or discontinued practices, allows for the addition of equivalency education and puts in place an emergency suspension clause for the protection of the public. This bill has no fiscal impact attached to it.

The language cleanup is self-evident. The board went through the statute with the intent of modernizing terms to reflect the intent of the statute appropriately. This is most noted in two areas. Throughout the statute there has been an inclusion for those potential license candidates that have been equivalently trained in jurisdictions that are outside of the United States. Mobility has been a trend in all of healthcare. This includes actual practice and education. There are currently more chiropractic educational institutions outside the United States than within our borders. This has become an issue when those candidates apply to become licensed in states that do not have an equivalency clause for educational purposes. To remedy this problem, the board has added the equivalently educated clause where appropriate throughout the statute language.

The other major area of language change consists in the area of peer review services. The board may utilize the service of a peer review committee to complete an independent investigation of a complaint and render an opinion of the matter. The language in this section was awkward and antiquated and was updated accordingly.

Another change includes the actual examination of potential candidates for licensure. There was a time when each individual state actually had the candidates sit for a state exam to obtain licensure. This has been replaced with national testing procedures. The only addition to the statute is the addition of an emergency suspension clause that allows the board to take immediate action against a licensee if the board has reason to believe that great harm to the public will ensue in a particular circumstance by allowing the license privilege to continue. There are parameters set that require a speedy hearing to investigate and determine the nature of the concern with regard to public safety. Other boards, such as the Board of Medical Examiners, already possess similar authority with similar safeguards.

Thank you for your time and consideration of HB1099. I would be happy to entertain any questions in this matter.

#1
11/26/2015

MOCK UP AMENDMENTS TO HOUSE BILL 1099 as introduced

Page 6, replace lines 29 through 31

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physician would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from the risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physician, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physician.
2. An ex parte temporary suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, shall be taken against the physician who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The physician is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.

4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempt record as defined in section 44-04-17.1.

Renumber Accordingly

Attach #1
HB 1099
03/10/2015
JH 24568

Good Morning Madam Chairman and members of the Senate Human Services committee,

My name is Dr. Carol Winkler and I am here representing the North Dakota Board of Chiropractic Examiners in testimony of HB 1099. I practice here in Bismarck, and have served the board from 2003 to 2013. I currently serve as a district director for the Federation of Chiropractic Licensing Boards on a national level. There are currently 397 actively practicing chiropractors in the state of North Dakota. The board has a proposed budget of about \$100,000 for the 2015 fiscal year. This bill cleans up antiquated language, removes outdated or discontinued practices, allows for the addition of equivalency education and puts in place an emergency suspension clause for the protection of the public. This bill has no fiscal impact attached to it.

The language cleanup is self-evident. The board went through the statute with the intent of modernizing terms to reflect the intent of the statute appropriately. This is most noted in two areas. Throughout the statute there has been an inclusion for those potential license candidates that have been equivalently trained in jurisdictions that are outside of the United States. Mobility has been a trend in all of healthcare. This includes actual practice and education. There are currently more chiropractic educational institutions outside the United States than within our borders. This has become an issue when those candidates apply to become licensed in states that do not have an equivalency clause for educational purposes. To remedy this problem, the board has added the equivalently educated clause where appropriate throughout the statute language.

The other major area of language change consists in the area of peer review services. The board may utilize the service of a peer review committee to complete an independent investigation of a complaint and render an opinion of the matter. The language in this section was awkward and antiquated and was updated accordingly.

Another change includes the actual examination of potential candidates for licensure. There was a time when each individual state actually had the candidates sit for a state exam to obtain licensure. This has been replaced with national testing procedures.

The only addition to the statute is the addition of an emergency suspension clause that allows the board to take immediate action against a licensee if the board has reason to believe that great harm to the public will ensue in a particular circumstance by allowing the license privilege to continue. There are parameters set that require a speedy hearing to investigate and determine the nature of the concern with regard to public safety. Other boards, such as the Board of Medical Examiners, already possess similar authority with similar safeguards. The House amended our original language for this section to duplicate the language of the Board of Medical Examiners. This provides for continuity in terms of due process for the licensee under investigation.

Thank you for your time and consideration of HB 1099. I would be happy to entertain any questions in this matter.