MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 3M

ROLL NUMBER

DESCRIPTION

1233

2001 HOUSE HUMAN SERVICES

HB 1233

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1233

House Human Services Committee

☐ Conference Committee

Hearing Date January 22, 2001

Tape Number	Side A	Side B	Meter #
Tape 1		X	1160 to 2095
Committee Clerk Signature	Connie Easton		

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: Opened hearing on HB 1233.

Rep. Weisz: Those of you that were here in previous sessions probably remember a bill that was passed having to do with the cost of copying medical records possibly for civil law suits or other purposes, and the cost in some cases is quite astronomical. So we passed a legislation and attempted to correct this problem, but I believe it was a maximum of $50 for a certain number of pages. It turns out there was a loop hole in that law. For normal claims processing, and some of these other things, some people are charging $50 for one piece of paper. So this bill is an attempt to correct that.

Dan Ulmer: Government Relations of BCBSND. It is our thinking that it's fairly difficult and somewhat irresponsible to pay a charge without seeing a bill. Medical records include both the charges and the reasons for the charges. Therefore, we would hope that you pass HB 1233 to allow us to continue our "claims review and processing" in as cost effective and seamless manner as possible. (See written testimony.) You do need to know that if you want to become a subscriber or member of Blue Cross we do pay for medical records in that process. In 1998 the board decided that medical records should be part of the process. There were some internal exchanges that occurred, particularly labs, that they up the fee for drawing blood in lieu of paying for records and eliminated our charges for medical records to perspective members to $30. Outside of that, we really don't pay for records. We do have instances where a physician may be on focus review when their practice patterns become apparent and we have to require a significant amount of records. In those cases we do pay for them. Those are fairly rare.

Bruce Levi: North Dakota Medical Association. I am more in a neutral position of this bill. This bill would provide that all copies of medical records requested by an insurance company for purposes of claims processing would be provided free of charge by the medical provider. What I've handed out are the Attorney General's opinion, and also the letter requesting the Attorney General's opinion from Senator Kilzer raising the issue of what is referred to as "the loop hole". The Attorney General's opinion suggests that in interpreting the statute, the maximum charge does apply to claims processing. My written testimony cites the language from the current BCBS provider network organization agreement that is on file. With the insurance department currently, providers must furnish to BCBS upon request, and at no cost, access to copies of medical records. The issue of who is responsible for the cost of medical record copies associated with claims processing is really currently a matter of contract. The existing CBS contract places

the burden of cost on the medical providers. Some other insurance companies do pay the cost of medical record copies for claims processing. There is no reason to limit future arrangements under contract between insurance companies and medical providers on this issue. I guess our point is that this should remain a matter for negotiations between the parties. HBO 1233 in its present form would take away that ability to negotiate who should pay for medical record copies.

Chairman Price: Close the hearing on HB 1233.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1233 b

House Human Services Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
2	xx		2070--2848

Committee Clerk Signature Corinne Easton

Minutes: Chair Price : Let's take up HB1233. We have amendments going around.

Rod St.Aubon, Blue Cross/Blue Shield : The amendments say on page 1, line 13, "will refer to any person designated to any person designated by the patient or the person authorized by the patient, if the records are requested for claims review or processing". We added "unless there is contractual agreement between the provider and the insurer concerning payment for medical records". These allows those providers that have arrangements with other insurance company can still bill for those. The other part of the amendment, page 2, line 3, is to make this the same language you used when you adopted the amendments in HB1234.

Rep. Weisz : **I move to accept these amendments.**

Rep. Galvin : **I second.**

VOICE VOTE: ALL YES. PASSED.

Rep. Weisz : I move a DO PASS AS AMENDED **Rep. Porter : I second.**

VOTE: 14 YES and 0 NO . PASSED. Rep. Weiler will carry the bill.

Adopted by the Human Services Committee
January 24, 2001

VR 1/24/01

HOUSE AMENDMENTS TO HB 1233 **HOUSE HS** **1-25-01**

Page 1, line 15, after "processing" insert "unless there is a contractual agreement between the provider and the insurer concerning payment for medical records"

HOUSE AMENDMENTS TO HB 1233 **HOUSE HS** **1-25-01**

Page 2, line 1, after "26.1-36-12.4" insert "and this subsection"

Page 2, line 3, after the period insert "A written medical records release providing consent to release medical records to a medical provider being advised or consulted concerning the current treatment of the patient does not expire after three years if the patient or the patient's authorized representative expressly authorizes the consent to exceed three years."

Renumber accordingly

Date: 1-24-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1233

House Human Services Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken DO Pass as Amended

Motion Made By Rep Weisz Seconded By Rep Porter

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf	✓	
Rep. Mark Dosch	✓		Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig	✓	
Rep. Frank Klein	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz	✓				

Total (Yes) 14 No

Absent

Floor Assignment Rep. Weiler

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

REPORT OF STANDING COMMITTEE

HB 1233, as amended, Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). placed on the Sixth order on the calendar.

Page 1, line 15, after "processing" insert "unless there is a contractual agreement between the provider and the insurer concerning payment for medical records"

Page 2, line 1, after "26.1-36-12.4" insert "and this subsection"

Page 2, line 3, after the period insert "A written medical records release providing consent to release medical records to a medical provider being advised or consulted concerning the current treatment of the patient does not expire after three years if the patient or the patient's authorized representative expressly authorizes the consent to exceed three years."

Renumber accordingly

2001 SENATE HUMAN SERVICES

HB 1233

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1233

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 12, 2001

Tape Number	Side A	Side B	Meter #
1	X		
March 20,2001 1	X		48
Committee Clerk Signature Carol Kolodejchuk			

Minutes:

The Human Services Committee was called to order by Vice-Chairman Kilzer. Five Senators were present. Senator Lee was absent.

The hearing was opened on HB 1233.

ROD ST.AUBYN, Blue Cross Blue Shield, introduced the bill. (Written testimony) Offered amendments. SENATOR KILZER: Do you accept the forms of a non participating doctor? MR. AUBYN: We are getting charged for information and only a short paragraph. We like to have our forms used, but will accept others. SENATOR MATHERN: Is it possible we should put both bills in one MR. ST. AUBYN:: The only concern was that if one gets killed so would the other.

ARNOLD THOMAS, ND Healthcare Assoc., testified in a neutral position. The concern to reconcile 1233 and 1234. Need the opportunity to visit with BCBS to insure same language. SENATOR KILZER: Are copies now accepted? MR. THOMAS: There is a wide array of

charging practices for records. Our issue was not with BCBS; we need to understand we must work together with companies. SENATOR MATHERN: Do you believe that bill applies only to hospitals? MR. THOMAS: No, it would apply to any provider. SENATOR POLOVITZ: Where does the $50 come in? MR. THOMAS: It would be case by case. Some may charge; some may not? No set policy. MR. ST. AUBYN: Statute says $20 first page and so much for each additional page. If we get into focus review, we ask for records; we continue to pay.

The hearing was closed on HB 1233.

March 20, 2001, Tape 1 Side A, Meter 48. Side B

Discussion resumed on HB 1233.

ROD ST. AUBYN, BCBS, presented amendments and explained them. We referred to them as March 14 and March 19 amendments. They do not work together.

ARNOLD THOMAS, ND Healthcare Assoc., answered question on the charge of Medical records. JOY KRUSH, St. Alexius Medical Record Dept., answered questions on the bill.

JIM BERG, Workers' Comp, testified that they pay $5 for first 5 pages.

Discussion SENATOR FISCHER moved Amendment A, March 14. SENATOR MATHERN seconded the motion. Discussion. Roll call vote failed 1-5. SENATOR KILZER moved a DO NOT PASS. SENATOR ERBELE seconded the motion. Roll call vote failed 3-3. Discussion. SENATOR MATHERN moved Amendment B. SENATOR FISCHER seconded the motion. Discussion. Roll call vote carried 5-1-0. SENATOR FISCHER moved DO PASS AS AMENDED. SENATOR POLOVITZ seconded the motion. Discussion. Roll call vote failed 3-3-0. The question was called again Roll call vote carried 4-2-0. SENATOR MATHERN will carry the bill.

option A

Rod St Aubyn

Proposed Amendment to Engrossed House Bill 1233
March 14, 2001

Page 1, line 14, delete "review"

Page 1, line 15, delete "and"

Page 1, line 15, after "processing" insert "in conjunction with a health insurance policy,"

Page 1, line 22, delete "review and"

Page 2, line 3, remove overstrike and delete "Except as specified in section 26.1-36-12.4 and this subsection, a"

Page 2, line 5, delete "A written medical records release"

Page 2, delete lines 6 – 9.

Renumber accordingly

Date: 3/20/01

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1233

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment A to failed 1-5

Motion Made By Sen Fischer Seconded By Sen Mathern

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson		✓	Senator Polovitz		✓
Senator Kilzer, Vice-Chairperson		✓	Senator Mathern		✓
Senator Erbele		✓			
Senator Fischer	✓				

Total (Yes) 4 No 3

Absent _____

Floor Assignment _____

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

BCBS March 14

Date: 3/20/01

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1233

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not pass motion failed

Motion Made By Sen Kilzer Seconded By Sen Erbele

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson		✓	Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathern		✓
Senator Erbele	✓				
Senator Fischer		✓			

Total (Yes) 3 No 3

Absent 0

Floor Assignment _____

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

option B

Ref H Hatlyn

Proposed Amendment to Engrossed House Bill 1233
March 19, 2001

Page 1, line 12, remove overstrike

Page 1, line 12, delete ":"

Page 1, delete lines 13-16

Page 1, line 17, delete "2 A"

Page 1, line 22, delete "claims review and processing or"

Page 2, line 3, remove overstrike and delete "Except as specified in section 26.1-36-12.4 and this subsection, a"

Page 2, line 5, delete "A written medical records release"

Page 2, delete lines 6 – 9.

Page 2, after line 9 add "3. It is not a prohibited practice as defined in Chapter 26.1-04 for health insurance companies with participating provider agreements to require that subscribers or members are responsible for providing the insurer copies of medical records used for claims processing when using nonparticipating providers. "

Renumber accordingly

Roll Call Vote #: 3 Date: 3/20/01

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1233

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment B

Motion Made By Sen Mathern Seconded By Sen Fischer

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson		✓	Senator Mathern	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

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

BCBS March 19, 2001

Date: 3/20/01

Roll Call Vote #: 4

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1233

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Sen Fischer Seconded By Sen Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson		✓	Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson		✓	Senator Mathern	✓	
Senator Erbele		✓			
Senator Fischer	✓				

Total (Yes) 3 No 3

Absent _____

Floor Assignment _____

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

Date: 3/20/01

Roll Call Vote #: ~~1~~ 5

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1233

Senate HUMAN SERVICES Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen Fischer Seconded By Sen Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson		✓	Senator Mathern	✓	
Senator Erbele		✓			
Senator Fischer	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen Mathern

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

REPORT OF STANDING COMMITTEE

HB 1233, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1233 was placed on the Sixth order on the calendar.

Page 1, line 12, remove the overstrike over "a" and remove the underscored colon

Page 1, remove lines 13 through 16

Page 1, line 17, remove "(2) A"

Page 1, line 22, remove "claims review and processing or"

Page 2, line 3, remove the overstrike over "A" and remove "Except as specified in section 26.1-36-12.4 and this subsection, a"

Page 2, line 5, replace "A written medical records release" with:

"3. It is not a prohibited practice as defined in chapter 26.1-04 for health insurance companies with participating provider agreements to require that subscribers or members are responsible for providing the insurer copies of medical records used for claims processing when using nonparticipating providers."

Page 2, remove lines 6 through 9

Renumber accordingly

2001 TESTIMONY

HB 1233

BCBSND testimony on HB1233

When this issue (HB1143) came through the House last session it ended up in a subcommittee with Representative Weisz as chairman.

When the subcommittee presented it's findings to the committee I testified that I wasn't sure if we had to pay for medical records when processing insurance claims or not.

Representative Porter responded to my testimony by stating "we get medical records to Medicare and BCBSND pro bono in overnight mail so we can get paid, why would any provider have a problem with that."

The bill became law and we had a number of non par chiropractors begin to bill us for copies of records. We balked at paying until Senator Kilzer asked the Attorney General for an opinion on the matter.

The Attorney General issued an opinion that said we had to pay for records unless we had a contractual arrangement. We have a policy/contract with all our participating providers that we don't pay for medical records. But our policy cannot extend to non-participating providers.

Therefore the Insurance Department informed us that we must pay for non-participating providers records requests. This lasted until we reviewed the charges we were experiencing with the Insurance Department. They then decided that the statute and AG's opinion used the term 'maximum charge' and therefore informed the non-par providers that they were charging too much.

It's our thinking that it's fairly difficult and somewhat irresponsible to pay a charge without seeing a bill. Medical records include both the charges and the reasons for the charges. Therefore we would hope that you pass HB1233 to allow us to continue our 'claims review and processing' in as cost effective and seamless manner as possible.

Dan Ulmer and Rod St. Aubyn
Government Relations BCBSND

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
STATE CAPITOL
600 E BOULEVARD AVE
BISMARCK ND 58505-0040
(701) 328-2210 FAX (701) 328-2226

Heidi Heitkamp
ATTORNEY GENERAL

July 19, 2000

Honorable Ralph Kilzer
State Senator, District 47
2040 N Grandview Ln
Bismarck, ND 58503-0845

Dear Senator Kilzer:

Thank you for your letter requesting an opinion on the effect of N.D.C.C. § 23-12-14 on the ability of a medical provider to charge an insurance company for copies of records.

N.D.C.C. § 23-12-14, enacted by the 1999 Legislative Assembly, provides:

1. As used in this section, "medical provider" means a licensed individual or licensed facility providing health care services. This section applies to every medical provider unless expressly provided otherwise by law. Upon the written request of a medical provider's patient or any person authorized by a patient, the medical provider shall:

   a. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.

   b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.

2. A written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient.

Subdivision 1(a) of this law requires a medical provider to provide a free copy of a patient's medical records to another medical provider if the records are requested for the purpose of transferring that patient's medical care to that other medical provider for the continuation of medical treatment. Subdivision 1(b) requires that upon the request of any person authorized by a patient, a medical provider shall provide a copy of a patient's medical records requested for any purpose other than the continuation of care as provided in subdivision 1(a), for the maximum charge indicated. Thus, if a patient authorizes the patient's insurer to obtain a copy of the patient's medical records from a medical provider for any purpose, this law authorizes a medical provider to charge the maximum amount indicated in subdivision 1(b).[1]

You ask the following questions:

1. Assuming a patient appropriately authorizes the release of medical information, does section 23-12-14 authorize a medical provider on and after August 1, 1999, to charge Blue Cross Blue Shield of North Dakota or other insurance company for copying medical records for the insurance company for purposes of processing a medical insurance claim or for other purposes? If so, is the insurance company obligated to make payment for the charge?

2. If section 23-12-14 applies to an insurance company under question 1 above, can the statutory obligation to make payment for copying medical records be modified by contract between the medical provider and the insurance company or must there be a specific statutory exception provided by law?

N.D.C.C. § 23-12-14 specifies a maximum amount a medical provider may charge an insurance company for copies of medical records; it does not establish a minimum amount. Thus, a medical provider can agree to charge less than the maximum, or charge nothing. It is up to the medical provider to decide how much it will charge. If an agreement

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[1] See also N.D.C.C. § 43-17-31(20) which states that disciplinary action may be imposed against a physician if the physician fails to supply copies of a patient's medical records to a patient's representative, and that the physician may assess a reasonable charge for supplying copies of medical records.

between the medical provider and the insurance company specifies that no charge for copies will be made or specifies a charge below the maximum allowed by N.D.C.C. § 23-12-14, that agreement would continue to apply between the parties until it is terminated or amended. The legislative history you quote in your letter indicates an awareness that sharing copies with an insurer can be a "contractual issued." If a medical provider has not agreed otherwise with the insurance company, the medical provider may charge any amount within the maximum amount allowed by N.D.C.C. § 23-12-14 and the insurance company will be obligated to pay the amount charged in order to obtain the records.

If medical providers want to ensure that they receive a minimum amount for providing copies to insurance companies, the law can be amended to state a minimum charge that must be paid by insurance companies. If the law was amended to provide a minimum charge, any agreement to pay less than the minimum would violate the statute.

Sincerely,

Heidi Heitkamp
Attorney General

las/vkk

DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Glenn Pomeroy
Commissioner of Insurance

October 26, 2000

Costs

We have had several inquiries about the enclosed statute regarding medical copying costs and we have also had conversations with Blue Cross representatives about the Attorney General's opinion I mailed you. We have legal questions concerning the application of the statute, which the opinion did not clear up, and about our ability to enforce it because it is not an insurance law per se.

Until we get those issues cleared up, we have developed some informal guidelines for the statute's application for the time being. Although the statute allows a provider to charge up to $20 for medical records of 25 pages, we do not feel that in good faith this is the amount that should be charged automatically. We do not believe that the statute was designed as a revenue enhancing mechanism. Likewise, it should not be used to retaliate to an insurer who requests copies of medical records in the processing of claims. We believe that it was passed so that providers could recoup the actual costs of making a copy of medical records.

Some providers are trying to charge $50 for a simple one-paragraph record. We feel this is an exorbitant fee, and we cannot in good conscience request that any insurer pay such costs. If we did, I can assure you that such fees would raise the costs of doing business for the insurers. I am enclosing an Attorney General's opinion that give us guidance in this area. It says that a 25-cent per page amount to copy records was too high when the actual cost was estimated to be 8 cents. We believe that each provider must compute the actual costs of making the copies and charge that amount. Nothing more. To charge any more would be unfair to the policyholders who will ultimately bear these costs.

We have also seen providers include their chart documentation time in the cost of making the medical records copies. The second opinion enclosed indicates that the time spent in preparing

documents cannot be considered an administrative expense. We believe that these types of costs cannot be recovered under the statute.

If non-participating providers make a good faith effort to submit their actual copying expenses to Blue Cross, we believe the company will likely pay the reasonable costs of the records. Thank you for your anticipated cooperation in this matter. Please share this letter with your fellow providers.

Sincerely,

Sarah Smith
Market Conduct Examiner
N.D. Insurance Department

SECS/njb
Enclosures
cc: Bob Stroup, Blue Cross Blue Shield of North Dakota
Craig Boeckel, North Dakota Chiropractors Association

26.1-36-12.4. Confidentiality of medical information.

1. An insurance company, as defined in section 26.1-02-01, health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation may not deliver, issue, execute, or renew a health insurance policy or health service contract unless confidentiality of medical information is assured pursuant to this section. An insurer shall adopt and maintain procedures to ensure that all identifiable information maintained by the insurer regarding the health, diagnosis, and treatment of persons covered under a policy or contract is adequately protected and remains confidential in compliance with all federal and state laws and regulations and professional ethical standards. Unless otherwise provided by law, any data or information pertaining to the health, diagnosis, or treatment of a person covered under a policy or contract, or a prospective insured, obtained by an insurer from that person or from a health care provider, regardless of whether the information is in the form of paper, is preserved on microfilm, or is stored in computer-retrievable form, is confidential and may not be disclosed to any person except:

a. If the data or information identifies the covered person or prospective insured upon a written, dated, and signed approval by the covered person or prospective insured, or by a person authorized to provide consent pursuant to section 23-12-13 for a minor or an incapacitated person;

b. If the data or information identifies the health care provider upon a written, dated, and signed approval by the provider. However, this subdivision may not be construed to prohibit an insurer from disclosing data or information pursuant to chapter 23-01.1 or from disclosing, as part of a contract or agreement in which the health care provider is a party, data or information that identifies a provider as part of mutually agreed upon terms and conditions of the contract or agreement;

c. If the data or information does not identify either the covered person or prospective insured or the health care provider, the data or information may be disclosed upon request for use for statistical purposes or research;

d. Pursuant to statute or court order for the production or discovery of evidence; or

e. In the event of a claim or litigation between the covered person or prospective insured and the insurer in which the data or information is pertinent.

2. An insurer may claim any statutory privileges against disclosure that the health care provider who furnished the information to the insurer is entitled to claim.

3. This section may not be construed to prevent disclosure necessary for an insurer to conduct utilization review or management consistent with the standards imposed by chapter 26.1-26.4, to facilitate payment of a claim, to analyze health plan claims or health care records data, to conduct disease management programs with health care providers, or to reconcile or verify claims under a shared risk or capitation arrangement. This section does not apply to data or information disclosed by an insurer as part of a biomedical research project approved by an institutional review board established under federal law. Nor may this section be construed to limit the insurance commissioner's access to records of the insurer for purposes of enforcement or other activities related to compliance with state or federal laws; however, medical records acquired by the commissioner as part of an examination of an insurer's business practices under section 26.1-03-19.2 or any other regulatory action or proceeding commenced by the commissioner are confidential.

Testimony HB 1233
North Dakota Medical Association
North Dakota Medical Group Management Association

HB 1233 would amend section 23-12-14 to provide that all copies of medical records requested by an insurance company for the purpose of claims review and processing would be provided free of charge by the medical provider.

This bill is in response to a July 19, 2000, Attorney General's opinion requested by Senator Ralph Kilzer, which interpreted the existing statute to provide that "if a medical provider has not agreed otherwise with the insurance company, the medical provider may charge any amount within the maximum allowed by section 23-12-14 and the insurance company will be obligated to pay the amount charged in order to obtain the records." In other words, the current statute requires the insurance company to pay for copies of medical records it requests from a medical provider, unless the insurance company contracts with the medical provider to provide some other arrangement.

BlueCross BlueShield of North Dakota (BCBSND) already contracts with providers in North Dakota in a manner that requires the provider to provide copies at no cost. The current BCBSND Provider Network Organization agreement on file with the Insurance Department states unequivocally that providers must "furnish to BCBSND, upon request and at no cost, access to and copies of Members' medical records (clause 3.16)."

The issue of who is responsible for the costs of medical record copies associated with claims processing is currently a matter of contract. Existing BCBSND contracts already place the burden of cost on the medical providers. Some other insurance companies that do business in North Dakota pay for the cost of medical record copies in claims processing. There is no reason to limit any future arrangements under contract between insurance companies and medical providers on this issue. This should remain a matter for negotiation between the parties. In its present form, HB 1233 would take away that ability to negotiate who should pay for medical record copies.

If there is concern over the current interpretation that section 23-12-14 applies to claims processing, subsection 1 could be amended to state that "This subsection does not apply to records requested for the purpose of claims review and processing," with removal of the proposed language on page 1, lines 13 through 15, and line 21.

NORTH DAKOTA SENATE

[redacted]
District 47
2040 North Grandview Lane
Bismarck ND 58501-0645

July 7, 2000

Honorable Heidi Heitkamp
Attorney General
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Attorney General Heitkamp,

An issue has been raised by a constituent in my district and the North Dakota Medical Association regarding the application of Section 23-12-14 of the North Dakota Century Code, which was enacted by the 1999 Legislative Assembly and was effective August 1, 1999. The issue is whether this new legislation authorizes a medical provider to charge an insurance company for copying medical records that are requested for purposes of processing a medical insurance claim or for other purposes.

Section 23-12-14 relates to medical records copying, and reads as follows:

23-12-14. Copies of medical records.

1. As used in this section, "medical provider" means a licensed individual or licensed facility providing health care services. This section applies to every medical provider unless expressly provided otherwise by law. Upon the written request of a medical provider's patient or any person authorized by a patient, the medical provider shall:
   a. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.
   b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.
2. A written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient.

Source: S.L. 1999, ch. 237, § 1 (1999 House Bill No. 1143).

For the purpose of processing medical insurance claims, patients authorize their medical provider in writing to release medical information necessary to process all medical insurance claims. Nevertheless, while many other insurance companies doing business in North Dakota reimburse providers for the cost of copying medical records needed to process claims, BlueCross BlueShield of North Dakota has adopted a policy of refusing to reimburse medical providers for medical records provided in processing a claim, arguing that Section 23-12-14 sets a maximum

charge but "does not require payment for medical records." This refusal appears to be contrary to the plain language of Section 23-12-14(1)(b) which states: "... the medical provider shall [p]rovide a copy of a patient's medical records requested for any purpose other than the continuation of care *for a maximum charge* . . ." A copy of a recent denial of payment for medical records copying is attached.

While it would appear that Section 23-12-14 on its face does not exempt medical records copied for the purpose of processing a medical insurance claim, this particular issue did arise in deliberations of the House Human Services Committee on HB 1143 on February 3, 1999, and the discussion that ensued may shed some light on the issue. In reviewing the audiotapes from that hearing, it is evident that the legislation was not limited. Mr. Tom Smith, representing domestic insurance companies, testified in favor of the legislation, noting that insurance companies need copies of records to substantiate billings and that the legislation was a step forward in providing criteria to address charges for medical records copying. The Committee was informed that some insurance companies do reimburse providers for medical records copied at their request for claims processing, and that the legislation would be beneficial to those insurance companies in setting a maximum copying charge.

On the other hand, a representative of BlueCross BlueShield of North Dakota testified that he was unsure whether his employer would oppose the bill if it applied to claims processing that involved the exchange of "paper," and implied that the issue was a matter to be decided by contract. His testimony follows:

> I don't know if we're in opposition or where we are with the bill quite frankly. We met with the same group that met last week and came to you with the amendments. First off, you need to understand that right now we don't pay for claims processing. If we have a question on a given claim the information is exchanged. Most of the claims processing that occurs in our institutions is done electronically and this bill doesn't have anything to do with electronic claims, which is fine with us. But if we have a question on a claim and we have to share a piece of paper on a given claim – say you're in the hospital and there's some question of medication....that information is exchanged for free – contractual issue. And I don't know if this bill gets into that or not. I was just trying to read it with the amendments, etc. It says with the patient's permission. Well obviously the patient gives everyone permission to pay for it – all the doctors, etc to share that particular information. So, I don't know if we get drug (sic) into that or not.. Of course, the other side has a response: well you're an insurance company you're used to paying for it. Well, you start laying this out at 20 bucks a page...that's a pretty significant chunk of change. And, I think we'd like to make sure that - it would seem to me to make much more sense that this kind of information sharing between us and our providers be a contractual issue that would be negotiated based on volume, etc. I realize that some of these companies that Mr. Smith represents and Mr. Kelsh represents do indeed pay for claims processing, etc., but we're talking about massive amounts of paper that would be pushed around in our facility for 400,000 lives. Actually more than that counting Medicare. So, I don't know where we stand on the bill quite frankly and maybe what we ought to do is amend it and I'll take it back to the shop and say -- OK how do you guys feel about this?

There was no subsequent modification to the bill that provides any specific exemption for medical records copied for claims processing. Inasmuch as BlueCross Blueshield of North Dakota now asserts that Section 23-12-14 does not apply to medical records copying, I request an Attorney General's opinion on the following three questions:

1. Assuming a patient appropriately authorizes the release of medical information, does Section 23-12-14 authorize a medical provider on and after August 1, 1999, to charge BlueCross BlueShield of North Dakota or other insurance company for copying medical records for the insurance company for purposes of processing a medical insurance claim? If so, is the insurance company obligated to make payment for the charge?

2. Assuming a patient appropriately authorizes the release of medical information, does Section 23-12-14 authorize a medical provider on and after August 1, 1999, to charge BlueCross BlueShield of North Dakota or other insurance company for copying medical records for the insurance company for purposes other than processing a medical insurance claim? If so, is the insurance company obligated to make payment for the charge?

3. Section 23-12-14 states that the section applies to a medical provider "unless expressly provided otherwise by law." If Section 23-12-14 applies to an insurance company under either question 1 or 2 above, can the statutory obligation to make payment for copying medical records be modified by contract between the medical provider and the insurance company or must there be a specific statutory exception provided by law?

I am aware of a district court opinion issued by Judge Dennis Schneider in March 1996, prior to the enactment of Section 23-12-14, allowing for the imposition of a reasonable fee for providing copies of medical records. A copy of the opinion is attached. Other analogous cases involving liability based on quantum meruit may also be helpful, including *Matter of Estate of Raketti*, 340 N.W.2d 894, 901 (ND 1983), and *Kulseth v. Rotenberger*, 320 N.W.2d 920 (ND 1982). Also attached is a copy of the applicable provision in the 2000 BlueCross BlueShield of North Dakota provider network organization agreement (paragraph 3.16), and a letter dated June 26, 1998, in which BlueCross BlueShield announced a new policy to make no additional payments for medical record requests.

Thank you for considering these important legal questions. Since the proposed BCBSND provider network organization agreements for 2001 will likely be circulated for review this coming October, a response by the end of September, 2000, would provide timely assistance and would be much appreciated. If clarification of any issue is necessary, please contact Bruce Levi at the North Dakota Medical Association at 223-9475.

Sincerely,

Senator Ralph Kilzer
District 47

Encs.

Proposed Amendment to HB 1233 (10471.0100)

On page 1, line 15, after "processing" add "unless there is a contractual agreement between the provider and the insurer concerning payment for medical records".

On page 2, line 3, after "writing by the patient." add "A written medical records release does not expire after three years, however, if a patient or the patient's authorized representative expressly gives consent to release of medical records to a medical provider being advised or consulted concerning the current treatment of the patient."

Testimony on HB 1233
Senate Human Services Committee
March 12, 2001

Madam chair and committee members, for the record, I am Rod St. Aubyn, representing Blue Cross Blue Shield of North Dakota.

HB 1233 originated because of problems occurring since the 1999 legislative session when this law was first adopted. BCBSND assumed that legislation would not affect our normal business operations, but soon experienced problems with some non-participating providers when they began to bill us for medical records in the normal course of claims processing.

It would probably be helpful to use an analogy to explain our situation. Assume that you take your car to a mechanic to have some minor work done. When you go to pay, you find that the charge is much higher than you expected. When you ask for an itemization of the charges, the mechanic says he will provide it, but you must first pay $50.00 for the itemization. I don't think you would find that situation fair, nor should our policyholders be expected to incur additional costs just to process their insurance claims.

In our contracts with providers, it is agreed that our normal fee schedule includes the cost of medical records required for clarifying and processing claims. However, a limited number of providers choose not to be a participating provider. When we requested a copy of some of the medical records to process the claim, some of those providers sent us a billing for the records. In some of those cases, we received a medical record amounting to about one paragraph of text and we received a corresponding billing for $50.00 for the records. Senator Kilzer requested an attorney general's opinion and it was determined that current law only limits the maximum amount that can be charged and thus we were required to pay for these records. The insurance department was helpful in trying to assist us, but they were limited in what they could do. As a result, we were faced with a dilemma. Our non-participating providers were actually being rewarded while our participating providers were being penalized. In some cases, the cost of the medical records actually exceeded the cost of the claim.

We spoke to Rep. DeKrey, the bill sponsor, about the problem and he concurred that when he introduced the original legislation he did not intend this problem to occur and indicated a willingness to sponsor this bill to clarify the intent.

Since the hearing in the House Human Services Committee, we were asked to consider an amendment to clarify that this bill applies to only health insurance policies. I am offering an amendment to provide for that clarification. In addition, your committee will hearing HB 1234 next. We offered an amendment to HB 1233 to incorporate the provisions of HB1234. However, when the amendments came down from the legislative council, the words changed and may change the intent of HB1234 to some degree. I am offering amendments to this bill to be same as the language in HB 1234.

Madam chair and committee members, we ask for your support for these amendments and the amended bill. I would be willing to answer any questions you may have.

Rod St. Aubyn, Blue Cross Blue Shield of North Dakota

Proposed Amendment to Engrossed House Bill 1233

Page 1, line 15, after "processing" insert "in conjunction with a health insurance policy."

Page 2, line 5, after "patient." insert "A written medical records release does not expire after three years, however, if a patient or the patient's authorized representative expressly gives consent to release of medical records to a medical provider being advised or consulted concerning the current treatment of the patient."

Page 2, line 5, delete "A written medical records release"

Page 2, delete lines 6 – 9.

Renumber accordingly

Provider	Records Charge	Total Claim Charge	Allowed Amount	Paid Amount	Claim #	Claim Status	Comments - Reason for Denial
	$50.00	$32.00	$0.00	$0.00		Denied	#3 - No info received
	$50.00	$38.00	$0.00	$0.00		Denied	#1 - No info received
	$50.00	$38.00	$0.00	$0.00		Denied	#1 - No info received
	$50.00	$32.00	$0.00	$0.00		Denied	#3 - No info received
	$50.00	$290.00	$0.00	$0.00		Denied	#3 - No info received
	$50.00	$36.00	$36.00	$20.52		Processed	#2
	$50.00	$186.00	$186.00	$92.19		Processed	#6
	$50.00	$68.00	$60.00	$38.40		Processed	#2 - costshare, lack of documentation, nonpar doctor
	$50.00	$54.00	$54.00	$30.24		Processed	#2
	$50.00	$114.00	$90.00	$0.00		Processed	#2 - costshare, no notes received
	$50.00	$38.00	$30.00	$20.03		Processed	#2 - costshare, lack of documentation, nonpar doctor
	$50.00	N/A	N/A	N/A	N/A	N/A	No claims ever submitted and no notes requested
	$550.00	$926.00	$456.00	$201.38			

Provider	Records Charge	Total Claim Charge	Allowed Amount	Paid Amount	Claim #	Claim Status	Comments - Reason for Denial
	$20.00	$75.00	$0.00	$0.00		Denied	#1 - No info received
	$20.00	$609.00	$0.00	$0.00		Denied	#1 - No info received
	$20.00	$125.00	$0.00	$0.00		Denied	#1 - No info received
	$20.00	$25.00	$0.00	$0.00		Denied	#1 - No info received
	$20.00	$445.00	$150.00	$0.00		Processed	#2 - costshare, lack of documentation, frequency
	$20.00	$1,149.00	$309.00	$43.81		Processed	#4 - costshare, frenquency, maintenance
	$20.00	$159.00	$159.00	$0.00		Processed	#2
	$20.00	$150.00	$25.00	$14.00		Processed	#4 - costshare, frequency, non par doctor
	$20.00	$157.50	$0.00	$0.00		Processed	#4 - frequency
	$20.00	$25.00	$25.00	$0.00		Processed	#2
	$20.00	$145.00	$85.00	$46.37		Processed	#4 - costshare, nonpar doctor
	$20.00	$379.00	$204.00	$0.00		Processed	#2 - costshare, frequency
	$20.00	$78.00	$62.00	$0.00		Processed	#4 - costshare, frequency
	$20.00	$180.00	$60.00	$0.00		Processed	#4 - costshare, frequency
	$20.00	$309.00	$159.00	$0.00		Processed	#2 - costshare, frequency, rehab not payable
	$20.00	$129.00	$129.00	$61.60		Processed	#2
	$20.00	$189.00	$134.00	$58.80		Processed	#2 - costshare, nonpar doctor, frequency, lack of documentation
	$20.00	N/A	N/A	N/A		N/A	Rhonda from office called & this individual does not have BCBS insurance - ignore this
	$360.00	$4,328.50	$1,501.00	$224.58			