

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1094

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

2003 HOUSE HUMAN SERVICES

HB 1094

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Salista Rickford  
Operator's Signature

10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1094

House Human Services Committee

☐ Conference Committee

Hearing Date January 13, 2003

Tape Number	Side A	Side B	Meter #
1	x		27.8-46.7
2	x		18.0-33.4
Committee Clerk Signature <i>Sharon Kenyon</i>			

Minutes:

Fred Larson of the ND Dept. of Health appeared in support of the bill with written testimony stating the purpose of the program is to provide health care providers wishing to enter into cooperative agreements within other providers or with third-party payers, immunity from prosecution under state antitrust laws and intended immunity under federal anti trust laws. This immunity is to be granted if the agreement meets certain standards of "public advantage" established in the law that would outweigh the disadvantages incurred through a reduction in competition.

The amendments provide 2 rather straightforward changes to this program. First, the time allowed for the Dept. of Health to conduct a review would be expanded from 90 days to 180 days. The second change is a technical amendment that corrects an unintended problem that resulted from the 1995 amendments to the statute. The requested change provides for a

Page 2

House Human Services Committee

Bill/Resolution Number HB 1094

Hearing Date January 13, 2003

continuing appropriation to the Dept. of Health to allow payment from the fund, of expenses incurred during the biennium in which they are incurred.

Rep. Weisz had concerns with changing the notice from 90 to 180 days and wondered if the applicants wouldn't have already done all this work in the filing application or is this 90 to 180 days for the Dept. to review the application.

Mr. Larson noted that this is correct, the Dept. has no expertise in antitrust matters and that this would be the maximum time period, not the minimum. If it gets very complicated, they need the extra days.

Rep. Devlin wondered about the language and why the emergency commission? Stating some may argue with the Governor and the Secretary of State on their and the commission being called by the chair who is the governor, is there maybe a better body to have legislative oversight of one that includes executive branch members.

Mr. Larson noted that the dept. would have any argument with another body being identified, but his understanding was that the legislative council budget section also is engaged with decisions that are made by the emergency commission, and that provides the legislative oversight. Our interest is simply getting legal access to the money in the time period in which the obligations occur.

No opposition appeared.

Further discussion of the bill was to who was on the Emergency Commission, when do they meet, if no one has ever used it, why do they need to double the time period and was this bill appropriating any money. Also noting that Emergency Commission is the only body that can appropriate the money besides the Legislature.

Page 3  
House Human Services Committee  
Bill/Resolution Number HB 1094  
Hearing Date January 13, 2003

**Discussion:** Checked to see if anyone has ever applied for an application and the answer was no. Legislative Council didn't see a need for this. The practice is that they just estimate the amount of fees so that allows them to spend within this budget period and then the correction has to be made at another time, which is common practice with all agencies. Also if there has never been an application, why would they need more time, 6 months is a long time.

Further discussion of section 2 as to just take out the overstrikes and thinking this would be a large dollar amount just for fee. Fiscal Note: assumption is they would charge enough in fees to cover the costs and the fact that we addressing a problem that hasn't happened and we were no indication that there is an application in the works.

Rep. Porter moved a DO NOT PASS, second by Rep. Uglem.

Rep. Devlin noted that he would rather eliminate Section 2.

Rep. Porter and Rep. Uglem withdrew their previous motion & second.

Rep. Devlin proposed an amendment to remove Section 2, second by Rep. Weisz. All in favor:

11 - yes, 0 - no, and 2 absent and not voting. Amendment passed.

Rep. Devlin moved a DNP as Amended, second by Rep. Wieland.

Vote: 11- yes, 0 - no and 2 absent and not voting. Rep. Porter will carry the bill.

**FISCAL NOTE**  
Requested by Legislative Council  
01/16/2003

**REVISION**

Amendment to: HB 1094

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$40,000			
Appropriations			\$40,000			

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The department is aware that there is current interest in requesting the department to issue a certificate of public advantage. The general fund expenditure of \$40,000 for the 2003-2005 biennium represents the maximum assessment to the applicants allowed for one case, unless there are extraordinary needs as contained in NDCC 23-17.5-11. The proposed amendment back to current language would have the department collect the assessment from the applicants and deposit it into the health care cooperative agreement fund, but would not allow the department to use that funding to pay the contractors who evaluate the potential reduction in competition and provide active ongoing supervision until appropriated by the next legislative assembly. The department's budget currently provides no funding for this and we would need up to \$40,000 in general funds per case, or more if extraordinary needs were present, to pay contractors and implement the requirements of this law.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

These expenses are not included in our HD appropriation bill HB 1004

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

This appropriation is not included in our HD appropriation bill HB 1004

4

Name:	Kathy J. Albin	Agency:	Health
Phone Number:	328.4542	Date Prepared:	01/16/2003

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

**FISCAL NOTE**  
Requested by Legislative Council  
01/15/2003

Amendment to: HB 1094

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The department is aware that there is current interest in requesting the department to issue a certificate of public advantage. The general fund expenditure of \$40,000 for the 2003-2005 biennium represents the maximum assessment to the applicants allowed for one case, unless there are extraordinary needs as contained in NDCC 23-17.5-11. The proposed amendment back to current language would have the department collect the assessment from the applicants and deposit it into the health care cooperative agreement fund, but would not allow the department to use that funding to pay the contractors who evaluate the potential reduction in competition and provide active ongoing supervision until appropriated by the next legislative assembly. The department's budget currently provides no funding for this and we would need up to \$40,000 in general funds per case, or more if extraordinary needs were present, to pay contractors and implement the requirements of this law.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathy J. Albin	Agency:	Health
	328.4542		01/16/2003



Phone Number:

Date Prepared:

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

4

**FISCAL NOTE**  
Requested by Legislative Council  
01/03/2003

Bill/Resolution No.: HB 1094

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The Certificate of Public Advantage program (NDCC Chapter 23-17.5) is designed to be supported by applicant fees which are to be assessed based upon the cost of program administration in connection with any given application. Assessments are to be deposited in the health care cooperative agreement fund of the state treasury. They are currently available to the department subject to legislative appropriation. HB 1094 would allow the Emergency Commission to approve expenditure of the funds during the biennium in which the expenses are incurred.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Kathy J. Albin	Agency:	Health
Phone Number:	328-4542	Date Prepared:	01/08/2003

38156.0101  
Title.0200

Adopted by the Human Services Committee  
January 13, 2003

VR  
1/13/03

HOUSE AMENDMENT TO HB 1094 HUM.SER. 1-14-03

Page 1, line 1, replace "sections" with "section" and remove "and 23-17.5-12"

Page 1, line 2, remove "; and to provide a"

Page 1, line 3, remove "continuing appropriation"

Page 2, remove lines 1 through 9

Renumber accordingly

Page No. 1

38156.0101

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

Date: 1-13-03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1094

House \_\_\_\_\_ HUMAN SERVICES \_\_\_\_\_ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DNP as Amended

Motion Made By Rep. Devlin Seconded By Rep. Wieland

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig	✓	
Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman	✓	
Rep. Robin Weisz	✓		Rep. Carol Niemeier	✓	
Rep. Vonnie Pietsch	✓		Rep. Louise Potter	✓	
Rep. Gerald Uglem	✓				
Rep. Chet Pollert					
Rep. Todd Porter	✓				
Rep. Gary Kreidt					
Rep. Alon Wieland	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Porter

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Valeria Rickford  
Operator's Signature

10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
January 14, 2003 11:15 a.m.

Module No: HR-06-0515  
Carrier: Porter  
insert LC: 38156.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**  
HB 1094, as amended, Human Services Committee (Rep. Price, Chairman) recommends  
**AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS**  
(11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1094, as amended, was  
placed on the Sixth order on the calendar.

Page 1, line 1, replace "sections" with "section" and remove "and 23-17.5-12"

Page 1, line 2, remove "; and to provide a"

Page 1, line 3, remove "continuing appropriation"

Page 2, remove lines 1 through 9

Renumber accordingly

2003 TESTIMONY

HB 1094

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

*Stalosta Rickford*

Date

*10/2/03*

**Testimony**

**House Bill 1094**

**House Human Services Committee**

**January 13, 2003**

**9:30 a.m.**

**North Dakota Department of Health**

Chairman Price and members of the committee, I am Fred Larson from the North Dakota Department of Health. I am here to offer testimony in support of House Bill 1094.

The Certificate of Public Advantage Program was established by the legislature in 1993. It is codified at NDCC Chapter 23-17.5. The purpose of the program is to provide health care providers wishing to enter into cooperative agreements with other providers or with third-party payers, immunity from prosecution under state antitrust laws and intended immunity under federal anti trust laws. This immunity is to be granted if the agreement meets certain standards of "public advantage" established in the law that would outweigh the disadvantages incurred through a reduction in competition.

The amendments provided in HB 1094 provide two rather straightforward changes to this program. First, the time allowed for the Department of Health to conduct a review would be expanded from 90 days to 180 days. We believe this change is necessary because of several features within the legislated design of the program. The legislation does not carry with it an appropriation to cover administrative costs. Instead, it is funded through a fee system collected from the applicants and deposited in the "health care cooperative agreement fund" in the state treasury. These fees are to be negotiated on a case-by-case basis. There will be no funds available for this program unless an application materializes. Thus there is no department staff available to administer the program, nor can any contractor be retained in a "ready state" as no funds are available to pay a retainer fee. From a purely practical standpoint, it would be nearly impossible to identify and obligate a qualified contractor to conduct the required analysis, then hold properly noticed public hearings, and reach a constructive decision within the currently allotted 90 days. We believe a change to 180 days would provide a far more reasonable opportunity to conduct this program in a credible manner.

The second change is a technical amendment that corrects an unintended problem that resulted from the 1995 amendments to the statute. The language that is in place makes the department's access to the moneys deposited in the health care cooperative agreement fund, subject to legislative appropriation. Thus, the department would be placed in the position of being required to incur an obligation for which no appropriation has been made and then to seek a remedy in the following legislative session. The exception is for amounts reimbursed to the Attorney General, which the statute declares "hereby appropriated." The requested change provides for a continuing appropriation to the Department of Health to allow payment from the fund, of expenses incurred during the biennium in which they are incurred. We believe that the original intent was to provide

some level of legislative oversight on the expenditure. This is retained by making the expenditure subject to Emergency Commission approval.

Madam Chairman and members of the committee, the Department of Health requests your favorable consideration and a do pass recommendation on HB 1094. Thank you for your attention, and I will be happy to address any questions from the committee.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date