

2009 HOUSE HUMAN SERVICES

HB 1204

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1204

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7194

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz opened hearing to HB 1204.

Rep. Keiser introduced his bill and testified in support of: The bill has a provision that would allow a health insurance company to decline paying for coverage if the person being covered is under the influence of alcohol or drugs at time of injury.

Rep. Frantsvog: In discussions you had prior to drafting this legislation did you discuss on what this will do to premiums?

Rep. Keiser: Yes, but not definitive. If we can get people into counseling, there will be more expense at that point, but if they don't reappear in the emergency room 10 times over the course of that disease, that's a savings.

Chairman Weisz: You don't consider this a mandate to health insurance coverage?

Rep. Keiser: No I don't.

Rep. Potter: If alcohol can be smelled on them by the physician, does it mean mandatory testing?

Rep. Keiser: No. Physicians are saying, there are times when it is obvious to them that they are treating patient for alcohol or drugs.

Rep. Holman: This appears to maybe an issue in an attempt to punish someone for who may have already been (inaudible) a felon and I'm wondering of the legalities of this in the long wrung?

Rep. Keiser: As a legislature, we write the laws, my original person position was punishment.

Chairman Weisz: The language applies to (inaudible) plans, it doesn't apply to self-funded?

Rep. Keiser: There is an amendment forthcoming that will cover not only group, but also individual plans.

Chairman Weisz: Thank you.

Rod St. Aubyn representing BC/BS of ND: Not sure if it's a matter of support or explanation or clarification. BC/BS has denied in some cases. Problem we have, how do we ever know about drug or alcohol use. I have offered some amendments to this bill. There is two exclusions, one for the alcohol related, Section H of bill and G was area of felony.

Chairman Weisz: (Inaudible) Line 16 of page 2 of the bill.

Rod St. Aubyn: They are referring to PERS. We are trying to limit this to strictly drug and alcohol situations. If you look at second page of my handout under the medical services (inaudible) we have also added "individual" in that third line. Someone had a question about mandate. This is not a mandate.

Chairman Weisz: There's nothing in the law that currently prohibit from covering this is there?

Rod St. Aubyn: We could elect to change our policies.

Rep. Potter: Explain what Section 2 does?

Rod St. Aubyn: If you're offering health insurance coverage, you cannot deny coverage of any injuries resulting from anyone drunk or on drugs. It prohibits any insurers from denying any claims resulting from these two conditions.

Rep. Hofstad: When a patient comes into an emergency room, seems to me one of the questions that would have to be asked of that patient is, what kind of drugs are you on? Don't your review the claim?

Rod St. Aubyn: We don't know because of electronic claims filed, and we don't get whole medical history. Than information is not on file.

Bruce Levi, Executive Director of ND Medical Association: testified in support. **See Testimony.**

NO OPPOSITION.

Chairman Weisz closed hearing on HB 1204.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1204

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7371 13 min.

Committee Clerk Signature	<i>Nicky Crabtree</i>
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Minutes:

Chairman Weisz: Amendments that were suggested by BC/BS. On page 2, Subsection H, these amendments will take out a provision of drugs or alcohol as a denial for coverage.

Representative Uglem: My thought is not to take the felony out (inaudible) instead of BC/BS. Is that incorrect?

Chairman Weisz: Not incorrect. Policy holders are required to pay for someone who commits a felony who falls off a roof or is shot. If someone ends up in prison system we pay anyway.

Representative Frantsvog: If someone commits a felony and ends up in county jail, here's a cost that would probably be passed onto the counties rather than the state.

Chairman Weisz: The minute they end up in the system, the state or county, is on the hook.

Representative Porter made a motion for amendments 101.

Vice-Chair Pietsch seconded.

Voice vote taken: 13 yea, 0 nay, 0 absent.

Representative Conrad made motion of a Do Pass as amended.

Representative Kilichowski seconded.

Roll Call Vote taken: 13 yea, 0 nay, 0 absent

Carrier of bill: Representative Uglem

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1204

Page 1, line 3, remove "subdivisions g and h of"

Page 1, replace lines 8 through 24 with:

"SECTION 1. AMENDMENT. Subsection 2 of section 26.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, ~~an~~ an accident and health insurance policy delivered or issued for delivery to any person in this state may not contain provisions respecting the matters described in this subsection unless the provisions in the policy are not less favorable in any respect to the insured or the beneficiary.
 - a. A provision that if the insured is injured or contracts sickness after having changed occupation to one classified by the insurer as more hazardous than that stated in the policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured changes occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon receipt of proof of the change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of proof, whichever is the more recent. The provision must provide that the classification of occupational risk and the premium rates will be such as have been last filed by the insurer ~~prior to~~ before the occurrence of the loss for which the insurer is liable or ~~prior to~~ before date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time the policy was issued; but if the filing was not required, then the classification of occupational risk and the premium rates will be those last made effective by the insurer in such state ~~prior to~~ before the occurrence of the loss or ~~prior to~~ before the date of proof of change in occupation.
 - b. A provision that if the age of the insured has been misstated, all amounts payable under the policy will be such as the premium paid would have purchased at the correct age.
 - c. A provision that if an accident or health or accident and health policy or policies previously issued by the insurer to the insured are in force concurrently therewith, making the aggregate indemnity for the type of coverage or coverages, in excess of the maximum limit of indemnity or indemnities, the excess insurance is void and all premiums paid for the excess will be returned to the insured or to the insured's estate. In lieu of this type of provision, the policy may provide that insurance effective at any one time on the insured under the policy and a like policy or policies in the insurer is limited to the one such policy elected by the insured, the insured's beneficiary, or the insured's estate, as

the case may be, and the insurer will return all premiums paid for all other such policies. 284

- d. A provision that upon the payment of a claim under the policy, any premium then due and unpaid or covered by any note or written order may be deducted ~~therefrom~~ from the payment.
- e. Subject to chapter 26.1-36.4, a provision that the insurer may cancel the policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, the cancellation is effective; and after the policy has been continued beyond its original term the insured may cancel the policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in the notice. The provision must provide that in the event of cancellation, the insurer will return promptly the unearned portion of any premium paid, and, if the insured cancels, the earned premium will be computed by the use of the short-rate table last filed in the state where the insured resided when the policy was issued. The provision must provide that if the insurer cancels, the earned premium shall be computed pro rata. The provision must provide that cancellation is without prejudice to any claim originating prior to the effective date of cancellation.
- f. A provision that any provision of the policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is amended to conform to the minimum requirements of such statutes.
- g. A provision that the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.
- h. ~~A provision that the insurer is not liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.~~
- i. A provision that after the loss-of-time benefit of the policy has been payable for ninety days, such benefit will be adjusted, as provided ~~below~~ under this subdivision, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed a percentage of the insured's earned income as provided in the policy; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under the policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded an alternative percentage of the insured's earned income as provided in the policy, at the time of the application, such higher percentage will be used in place of the original percentage provided.
 - (1) The provision must provide that the adjusted loss-of-time benefit under the policy for any month will be only such proportion of the loss-of-time benefit otherwise payable under the policy as (1) (a) the product of the insured's earned income and the original percent, or, if higher, the alternative percentage, bears to (2) (b) the total amount of loss-of-time benefits payable for such month under the policy and all other

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valid loss-of-time coverage on the insured, without giving effect to the "overinsurance provision" in this or any other coverage, less in both ~~(1)~~ (a) and ~~(2)~~ (b) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision".

- (2) The provision must provide that in making the computation, all benefits and earnings will be converted to a consistent basis weekly if the loss-of-time benefit of the policy is payable weekly, or monthly if the benefit is payable monthly, or otherwise, based upon the time period. If the numerator of the foregoing ratio is zero or is negative, no benefit is payable.
- (3) The provision must provide that in no event does the provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under the policy and all other valid loss-of-time coverage below the lesser of three hundred dollars and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under the policy above the amount which would have been paid in the absence of the provision, nor take into account or operate to reduce any benefit other than the loss-of-time benefit.
- (4) The provision must provide that:
 - ~~(1)~~ (a) "Earned income", except when otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and the insured's average monthly earnings for a period of two years immediately preceding the commencement of the disability, and does not include any investment income or any other income not derived from the insured's vocational activities.
 - ~~(2)~~ (b) "Overinsurance provision" includes this type of provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.
- (5) This type of provision may be included only in a policy which that provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage must be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy must include a definition of "valid loss-of-time coverage" which may include coverage provided by

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governmental agencies and by organizations subject to regulation by insurance law and by insurance departments of this or any other state or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any workforce safety and insurance or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved."

Page 2, line 9, remove "For"

Page 2, remove lines 10 and 11

Renumber accordingly

Date: 1-20-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1204

House HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

☒ Do Pass

9

Do Not Pass

☒

Amended

Motion Made By

Rep Porter

Seconded By

Rep. Pietsch

[illegible]**Total**

(Yes)

13

No

2

Absent

Bill Carrier

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

HB 1204 on amendments 101

Date: 1-20-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House HUMAN SERVICES

Committee

☐ Check here for Conference Committee 1204

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep Conrad Seconded By Rep Kilichowski

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 13 No 0

Absent 0

Bill Carrier Rep Uglem

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

REPORT OF STANDING COMMITTEE

HB 1204: Human Services Committee (Rep. Welsz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1204 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "subdivisions g and h of"

Page 1, replace lines 8 through 24 with:

"SECTION 1. AMENDMENT. Subsection 2 of section 26.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, ~~no~~ an accident and health insurance policy delivered or issued for delivery to any person in this state may not contain provisions respecting the matters described in this subsection unless the provisions in the policy are not less favorable in any respect to the insured or the beneficiary.
 - a. A provision that if the insured is injured or contracts sickness after having changed occupation to one classified by the insurer as more hazardous than that stated in the policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured changes occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon receipt of proof of the change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of proof, whichever is the more recent. The provision must provide that the classification of occupational risk and the premium rates will be such as have been last filed by the insurer ~~prior to~~ before the occurrence of the loss for which the insurer is liable or ~~prior to~~ before date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time the policy was issued; but if the filing was not required, then the classification of occupational risk and the premium rates will be those last made effective by the insurer in such state ~~prior to~~ before the occurrence of the loss or ~~prior to~~ before the date of proof of change in occupation.
 - b. A provision that if the age of the insured has been misstated, all amounts payable under the policy will be such as the premium paid would have purchased at the correct age.
 - c. A provision that if an accident or health or accident and health policy or policies previously issued by the insurer to the insured are in force concurrently therewith, making the aggregate indemnity for the type of coverage or coverages, in excess of the maximum limit of indemnity or indemnities, the excess insurance is void and all premiums paid for the excess will be returned to the insured or to the insured's estate. In lieu of this type of provision, the policy may provide that insurance effective at any one time on the insured under the policy and a like policy or policies in the insurer is limited to the one such policy elected by the insured, the insured's beneficiary, or

the insured's estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

- d. A provision that upon the payment of a claim under the policy, any premium then due and unpaid or covered by any note or written order may be deducted ~~therefrom~~ from the payment.
 - e. Subject to chapter 26.1-36.4, a provision that the insurer may cancel the policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, the cancellation is effective; and after the policy has been continued beyond its original term the insured may cancel the policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in the notice. The provision must provide that in the event of cancellation, the insurer will return promptly the unearned portion of any premium paid, and, if the insured cancels, the earned premium will be computed by the use of the short-rate table last filed in the state where the insured resided when the policy was issued. The provision must provide that if the insurer cancels, the earned premium shall be computed pro rata. The provision must provide that cancellation is without prejudice to any claim originating prior to the effective date of cancellation.
 - f. A provision that any provision of the policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is amended to conform to the minimum requirements of such statutes.
 - g. A provision that the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.
 - h. ~~A provision that the insurer is not liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.~~
 - i. A provision that after the loss-of-time benefit of the policy has been payable for ninety days, such benefit will be adjusted, as provided ~~below~~ under this subdivision, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed a percentage of the insured's earned income as provided in the policy; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under the policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded an alternative percentage of the insured's earned income as provided in the policy, at the time of the application, such higher percentage will be used in place of the original percentage provided.
- (1) The provision must provide that the adjusted loss-of-time benefit under the policy for any month will be only such proportion of the loss-of-time benefit otherwise payable under the policy as ~~(1)~~ (a) the product of the insured's earned income

and the original percent, or, if higher, the alternative percentage, bears to ~~(2)~~ (b) the total amount of loss-of-time benefits payable for such month under the policy and all other valid loss-of-time coverage on the insured, without giving effect to the "overinsurance provision" in this or any other coverage, less in both ~~(+)~~ (a) and ~~(2)~~ (b) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision".

- (2) The provision must provide that in making the computation, all benefits and earnings will be converted to a consistent basis weekly if the loss-of-time benefit of the policy is payable weekly, or monthly if the benefit is payable monthly, or otherwise, based upon the time period. If the numerator of the foregoing ratio is zero or is negative, no benefit is payable.
- (3) The provision must provide that in no event does the provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under the policy and all other valid loss-of-time coverage below the lesser of three hundred dollars and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under the policy above the amount which would have been paid in the absence of the provision, nor take into account or operate to reduce any benefit other than the loss-of-time benefit.
- (4) The provision must provide that:

 - ~~(+)~~ (a) "Earned income", except when otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and the insured's average monthly earnings for a period of two years immediately preceding the commencement of the disability, and does not include any investment income or any other income not derived from the insured's vocational activities.
 - ~~(2)~~ (b) "Overinsurance provision" includes this type of provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.
- (5) This type of provision may be included only in a policy ~~which~~ that provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary

to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage must be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy must include a definition of "valid loss-of-time coverage" which may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance departments of this or any other state or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any workforce safety and insurance or employer's liability statute, benefits provided by labor-management trustees plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved."

Page 2, line 9, remove "For"

Page 2, remove lines 10 and 11

Renumber accordingly

2009 SENATE HUMAN SERVICES

HB 1204

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1204

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 03-02-09

Recorder Job Number: 9992

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman J. Lee Opened the hearing on HB 1204

Representative George Keiser #47. Introduced HB 1204 and provided the history of the bill.

Emergency room doctors have been requesting that this section of the law be repealed. It is a short repeal relating to page 3 lines 20-22. He originally supported that section as he did not want insurers to be held liable for injuries related to intoxication but changed after four years of lobbying by the emergency room physicians asking for the law to be repealed due to unintended consequences. The law requires emergency rooms to provide service whether or not the patient has the money to pay. They operate under a "don't ask, don't tell" policy because if they do know that a person is intoxicated and it goes on the record, the claim can be denied. Maggie Anderson from Human Services said that if we do not deal with it at the medical level, eventually it becomes our problem and we, the state, have to pay. Spoke about how these claims are processed. The bottom line is that these claims are not being denied, they are being treated and there is no intervention to prevent the second one. The whole person and problem are not being treated that cause people to be in the emergency room. 14 states have repealed this section of the law, there are more states addressing this but he does not know how many.

Chairman J. Lee Obviously the amendments are extensive, can you run us by how those changes were made?

Keiser I am going to let BC/BS explain those amendments. PERS will also appear to explain their thoughts.

Senator Dever In the report it says 50 cents per contract per month, does that mean the cost of insurance is going to go up?

Keiser That is what the insurance company is saying.

Discussion about a newspaper article

Rod St. Aubyn Blue Cross Blue Shield, ND. I will attempt to answer some of the questions raised by the committee. What the amendments did was to clean up some of the general language. The amendments on page 1 are all just grammatical changes. The original bill also

struck out 2 areas, the previously mentioned one, and the language about felonies. Gave example about a person committing robbery and receiving injuries and the place of the insurance company in that situation. The amendments limit this strictly to alcohol related incidents. Spoke about the problems BC/BS has with administering the alcohol portion. 9 times out of 10, BC/BS does not know if an injury was alcohol related. When we do know about them, we adhere to the current law. Spoke about alcohol related criminal activities. The whole idea behind this is that we can test for alcohol and determine if there is a problem and the person needs a referral for treatment. We will see what we can do about the fiscal note. Because of the coordination with no fault auto related incidents, they are going to be picking up the first 10,000 dollars anyway.

Chairman J. Lee Was there a cost benefit analysis for this as well?

St. Aubyn No, because this really is not a mandate.

Chairman J. Lee Do we need to rerefer this to appropriations?

St. Aubyn If you give me a day or two I will check with our actuaries because I think the only way you would have to refer is if they were asking for an appropriation.

Discussion about 50 cent increase

St. Aubyn Submitted and spoke about another amendment. See attachment #1.

Bruce Levi Executive Director of the ND Medical Association. Spoke in support of 1204. See attachment #2.

Senator Dever Does this have anything to do with worker's compensation?

Levi No, I don't believe there are any WSI issues in the bill.

Rod St. Aubyn I wanted to remind you that state law only applies to fully insured. Self funded plans, even you passed this, could still theoretically say that as part of their plan that they do not want to pay. We try to have a boiler plate method for administering claims. It would be our recommendation that we apply these changes to the self funded as well but that is not to say that a self funded plan could sit there and say they do not want to cover alcohol related injuries.

Chairman J. Lee Do you have pretty good luck talking with self funded plans about changes?

St. Aubyn Yes, generally they do follow our standards but that's not to say that there are some exceptions made.

There was no opposition testimony submitted.

Sparb Collins PERS. Gave neutral testimony. I agree with what Rod said, they are not denying these claims right now so I am a little unsure about the 50 cent charge. I'm sure after an opportunity to talk with the actuaries that number might go down.

Discussion about whether or not to send this to appropriations depending on what is determined by the actuaries

Chairman J. Lee Closed the hearing on HB 1204.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1204

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 03-03-2009

Recorder Job Number: 10097

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman J. Lee Opened the discussion on HB 1204.

Discussion about the amendment from Rod St. Aubyn and the information the committee requested from him regarding the 50 cent increase

Chairman J. Lee Called to see if the committee could get more info from Rod

Discussion on the bill, the committee was comfortable but wondered why no other insurers spoke at the hearing

Chairman J. Lee Suspended the discussion on HB 1204

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1204

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 03-17-09

Recorder Job Number: 11144

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman J. Lee Reopened the discussion on HB 1204 and gave a brief summary of the bill.

See attachment #3 for additional information.

The committee was comfortable with the bill as PERS and Blue Cross Blue Shield were comfortable with it.

Senator Erbele I move the amendment

Senator Heckaman Second

The Clerk called the role on the motion to move the amendment. **Yes: 6, No: 0, Absent: 0.**


Senator Erbele I move **Do Pass as Amended**

Senator Heckaman Second

The Clerk called the role on the motion to **Do Pass as Amended**. **Yes: 6, No: 0, Absent: 0.**

Senator Marcellais will carry.

March 4, 2009


3/18/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1204

Page 1, line 1, after "enact" insert "subsection 15 to section 26.1-36-05," and after "26.1-36" insert a comma

Page 1, line 4, after "to" insert "individual"

Page 6, after line 5, insert:

"SECTION 2. Subsection 15 to section 26.1-36-05 of the North Dakota Century Code is created and enacted as follows:

15. A provision that except as otherwise provided under this subsection, the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a crime or to which a contributing cause was the insured's engagement in an illegal occupation. However, under this subsection the insurer is liable for a loss to the extent the crime committed was a misdemeanor violation of section 39-08-01."

Page 6, line 10, after the first underscored comma insert "individual."

Page 6, line 14, after the underscored period insert "The coverage required under this section may be subject to limitations under subdivision g of subsection 2 of section 26.1-36-04 or subsection 15 of section 26.1-36-05."

Page 6, line 20, after "under" insert "subsection 15 of section 26.1-36-05 and" and replace "2" with "3"

Renumber accordingly

Date: 3/17/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1204

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number .02D1

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Rerefer to Appropriations
☒ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Erbele Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 3/17/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1204

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90568.0201 Title 0300

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Rerefer to Appropriations
☐ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Erbele Seconded By Sen. Heckaman

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Marcellais

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

REPORT OF STANDING COMMITTEE

HB 1204, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1204 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "subsection 15 to section 26.1-36-05," and after "26.1-36" insert a comma

Page 1, line 4, after "to" insert "individual"

Page 6, after line 5, insert:

"SECTION 2. Subsection 15 to section 26.1-36-05 of the North Dakota Century Code is created and enacted as follows:

15. A provision that except as otherwise provided under this subsection, the insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a crime or to which a contributing cause was the insured's engagement in an illegal occupation. However, under this subsection the insurer is liable for a loss to the extent the crime committed was a misdemeanor violation of section 39-08-01."

Page 6, line 10, after the first underscored comma insert "individual,"

Page 6, line 14, after the underscored period insert "The coverage required under this section may be subject to limitations under subdivision g of subsection 2 of section 26.1-36-04 or subsection 15 of section 26.1-36-05."

Page 6, line 20, after "under" insert "subsection 15 of section 26.1-36-05 and" and replace "2" with "3"

Renumber accordingly

2009 TESTIMONY

HB 1204



**Testimony in Support of House Bill No. 1204
House Human Services Committee
January 19, 2009**

**NORTH DAKOTA
MEDICAL
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Bruce Levi
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General Counsel

Leann Tschider
Director of Membership
Office Manager

Annette Weigel
Administrative Assistant

Chairman Weisz and members of the Committee. I'm Bruce Levi and I serve as the Executive Director of the North Dakota Medical Association. NDMA is the professional membership organization for North Dakota physicians, residents and medical students.

HB 1204 ensures that our statutory language in North Dakota clearly prohibits what are often termed "alcohol exclusion" provisions in medical insurance policies. Alcohol exclusion laws which still exist in many states make it harder for law enforcement to do its job; are more likely to increase drunk driving incidents than to decrease them; and mean that fewer patients with drinking problems receive effective treatment, resulting in additional health care costs.

From a physician perspective, alcohol exclusion provisions help drunk drivers escape detection and avoid taking personal responsibility for their drinking problem; makes it more likely that drunk drivers will drive drunk again; adds to the cost of the health care system; and makes it more difficult for individuals who have problems with alcohol or drugs to access the treatment they need.

Alcohol exclusion provisions allow health insurance companies to deny coverage to individuals who are injured as a result of being under the influence of alcohol or any narcotic not prescribed by a physician. It was promulgated as a model law almost 60 years ago, when alcohol and drug problems and their treatment were not nearly as well understood as they are today; the National Association of Insurance Commissioners (NAIC), the very organization that developed the model law, recognized these advances by repudiating the Alcohol Exclusion Law in 2001. The National Conference of Insurance Legislators (NCOIL) also endorsed this change, and the Alcohol Exclusion Law has since been repealed or amended in five states.

The American Medical Association in 2003 adopted policy in opposition to alcohol exclusion laws. According to the AMA, "Emergency room physicians are significantly less likely to screen patients for an alcohol problem in states where [such a law] is embodied in state code with their reluctance to screen based in part on the potential for adverse financial impact for patients and for hospitals and physicians themselves." By discouraging screening and treatment, alcohol exclusion provisions lead to more hospital readmissions, DUIs, alcohol-related traffic infractions, alcohol-related arrests, and injury-related hospital readmissions. HB 1204 will ensure that this does not become the case in North Dakota which could result in medical providers becoming reluctant to test injured patients' blood alcohol content.

Thank you for the opportunity to testify on HB 1204. On behalf of NDMA, I urge a "Do Pass" on the bill.

Proposed Amendments to HB 1204

Page 6, line 10, replace "a" with "an individual,".

**EMPLOYEE BENEFITS PROGRAMS COMMITTEE
REPORT TO THE 61ST LEGISLATIVE ASSEMBLY
REGARDING ENGROSSED HOUSE BILL NO. 1204**

Date: January 30, 2009

Sponsor: Representative George J. Keiser

Proposal: Provides that an insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any major medical expense policy on a group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits, of the same type offered under the policy or contract for illnesses, for health services to any individual covered under the policy or contract for injury or illness resulting from any loss sustained or contracted in the consequence of the insured's being intoxicated or under the influence of any narcotic.

System affected: Uniform group health insurance program.

Actuarial Analysis: The board's retirement consultant reported that the estimated additional cost to the Public Employees Retirement System is 50 cents per contract per month.

Committee Report: No recommendation.



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Leann Tschider
Director of Membership
Office Manager

Annette Weigel
Administrative Assistant

**Testimony in Support of House Bill No. 1204
Senate Human Services Committee
March 2, 2009**

Madam Chairman Lee and Committee Members. I'm Bruce Levi and I serve as the Executive Director of the North Dakota Medical Association. NDMA is the professional membership organization for North Dakota physicians, residents and medical students.

Engrossed HB 1204 ensures that our statutory language in North Dakota clearly prohibits what are often termed "alcohol exclusion" provisions in medical insurance policies. Alcohol exclusion laws which still exist in many states and many organizations, including physician groups, are working to repeal them. Section 2 of the bill clearly provides that a health insurance policy may not ^{be} executed or renewed "unless the policy ... provides benefits ... for health services ... for injury or illness resulting from any loss sustained or contracted in the consequence of the insured's being intoxicated or under the influence of any narcotic."

From a physician perspective, alcohol exclusion provisions help drunk drivers escape detection and avoid taking personal responsibility for their drinking problem; makes it more likely that drunk drivers will drive drunk again; adds to the cost of the health care system; and makes it more difficult for individuals who have problems with alcohol or drugs to access the treatment they need.

Alcohol exclusion provisions were promulgated as a model law almost 60 years ago, when alcohol and drug problems and their treatment were not nearly as well understood as they are today; the National Association of Insurance Commissioners (NAIC), the very organization that developed the model law, recognized these advances by repudiating the Alcohol Exclusion Law in 2001. The National Conference of Insurance Legislators (NCOIL) also endorsed this change, and the Alcohol Exclusion Law has since been repealed or amended in several states.

The American Medical Association in 2003 adopted policy in opposition to alcohol exclusion laws. According to the AMA, "Emergency room physicians are significantly less likely to screen patients for an alcohol problem in states where [such a law] is embodied in state code with their reluctance to screen based in part on the potential for adverse financial impact for patients and for hospitals and physicians themselves." By discouraging screening and treatment, alcohol exclusion provisions lead to more hospital readmissions, DUIs, alcohol-related traffic infractions, alcohol-related arrests, and injury-related hospital readmissions. Engrossed HB 1204 will ensure that this does not become the case in North Dakota which could otherwise result in medical providers becoming reluctant to test injured patients' blood alcohol content, and even in injured persons delaying appropriate treatment until they "sober up."

Thank you for the opportunity to testify on Engrossed HB 1204. On behalf of NDMA, I urge a "Do Pass" on the bill.

Lee, Judy E.

From: Rod St. Aubyn [Rod.St.Aubyn@bcbsnd.com]
Sent: Tuesday, March 03, 2009 6:52 PM
To: Keiser, George J.; Lee, Judy E.; Collins, J. Sparb
Cc: Brad Bartle; Dan Ulmer; Robert D Scheiring
Subject: HB 1204 - alcohol exclusions

I have been working with our actuaries on the fiscal note provided to Sparb. They indicated that as this bill is currently worded, many past claims that have been previously excluded from payment would probably have to be paid. Past discussions about this bill included incidents that were more auto related DUI's, which also involved the auto no fault coverage. That was our original assumptions. Our actuaries ran a list of past denials based on different codes. That is how they came up with their original estimate. In addition, PERS claims that were previously denied were selectively reviewed.

However, at our request they did visit with claims staff and reinterpreted the impact on claim costs on anticipated PERS claims. Doing these calculations, they have revised their estimated cost to \$.13 per contract per month.

Even with their analysis, they feel that the language of the bill leaves many interpretations on what should be paid and what can be excluded because of the currently allowed criminal act exclusion. Let me explain scenarios that the actuaries feel would now have to be covered, but were previously excluded:

- Two people are intoxicated in a bar, get into a fight resulting in serious injuries. Both are charged with a crime (felony assault or other types of offenses). Currently these claims can be excluded, but this bill appears to say that these claims would have to be paid.
- Let's complicate this previous situation - two people in a bar, one is intoxicated and one is sober, and they get into a fight resulting in a serious head injury for the sober person and other injuries to the intoxicated person. Both are charged with serious crimes. Currently both claims could be denied based on the criminal act and alcohol exclusions. With this bill, it appears that the sober individual's claims could be excluded, but the intoxicated person's claims would possibly be paid.
- A person, high on drugs or alcohol, commits a felony crime, such as a robbery, and is injured during apprehension. Currently the criminal exclusion and alcohol exclusion sections would say that they claims could be denied. With this bill, if the person is under the influence of the drug or alcohol, does the insurer have to pay?
- A meth dealer, high on meth, is working on his meth lab when it explodes. He is charged with drug manufacturing. Currently, it could be excluded. Based on this bill, would the claims have to be paid?

Our actuarial staff feel that the new actuarial estimate is justifiable based on their reading of the bill and these examples would have to be paid based on the current bill language. Keep in mind, even one major head trauma case could result in claims fair in excess of the actuarial estimate for PERS. The \$.13 per contract per month could possibly be lowered more with further clarification of the legislative intent.

Based on that knowledge, do we want to limit the bill to simply claims related to alcohol/drug intoxication driving injuries or other alcohol/drug related claims that do not involve other crimes, such as fleeing a police officer, illegal occupations, etc.? We would like some direction to finalize our estimated cost. We would urge that some amendments be offered to

make the intent of the legislature very clear. Sen. Lee and Rep. Kaiser, I will try to visit with both of you in the morning to get some direction. You can catch me on my cell phone at 701-799-6366.

Thanks. Rod

Rod St. Aubyn
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#3

Lee, Judy E.

From: Clark, Jennifer S.
Sent: Wednesday, March 04, 2009 12:42 PM
To: Lee, Judy E.
Cc: Rod St. Aubyn
Subject: HB 1204

Senator-

Per your request, I've met with Rod St. Aubyn to come up with a set of proposed amendments to HB 1204, relating to drug and alcohol coverage by health insurance. When you receive this set of amendments, please review them closely to make sure they accomplish what you intended.

The amendments will:

- Require individual policies to cover claims for medical expenses resulting from drug or alcohol use; however, the policy will NOT be required to cover claims for medical expenses resulting from committing a felony or engaging in an illegal occupation.
- Require group policies (including PERS) to cover claims for medical expenses resulting from drug or alcohol use; however, the policy will NOT be required to cover claims for medical expenses resulting from committing a crime or engaging in an illegal occupation, EXCEPT for misdemeanor DUI.
- Codify the existing practice of group policies NOT covering medical expenses resulting from committing a crime or engaging in an illegal occupation (BUT, as noted above, there is an exception for coverage of a medical expense for which a contributing cause was a misdemeanor violation of a DUI).

Hope that accurately reflects the impact of the amendments as well as reflects your wishes-

Jenn

Jennifer Clark
Counsel
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