

2009 HOUSE HUMAN SERVICES

HB 1511

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1511

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8006

Committee Clerk Signature

*Vicky Crabtree*

Minutes:

**Chairman Weisz opened hearing on HB 1511.**

**Rep. Dosch introduced the bill he also sponsored: See Testimony #1.**

**Rep. Conrad:** I appreciate this bill and can you give us a background on how you came to do this bill?

**Rep. Dosch:** Reading on of the audit reports that was conducted by our state auditor and went to the Attorney General to talk about it. I drew up this bill and he thought it was a good idea.

**Rep. Porter:** On the fiscal note we see the split between general and other funds. Why wouldn't there be any associated revenues coming back from the state because of the (inaudible) returning money to the state?

**Rep. Dosch:** There is some dollars that come back to the state. Attorney General's Office would have more information on that.

**Tom Trembeath, Chief Deputy Attorney General for ND testified in behalf of Wayne**

**Stenehjem Attorney General in support of bill:** Attorney General Stenehjem is in support of this bill as he was for its predecessor in the last session. This isn't the same bill, but has the same concept.

**Rep. Damschen:** In Section 2 in lines 23 and 24, it says agents designated by attorney general etc., etc., is that going to be the envision now (inaudible) that is not already authorized in that area?

**Tom Trembeath:** My understanding is this, people are employees FTEs associated with Medicaid fraud have to be exclusively dedicated to that unit.

**Chairman Weisz:** Is there some indication the at state level how much fraud is going on?

**Tom Trembeath:** I close to having that information. South Dakota has a budget of \$400,000 and has a 5 member unit. I presume ND would have about the same.

**Chairman Weisz:** Could you get the SD information?

**Tom Trembeath:** Yes

**Parrell Grossman, Director of Consumer Protection and Antitrust Division Office of Attorney General testified in support. See Testimony #2.**

**Rep. Conrad:** Do you have the amount from the last couple of years we have gotten from the (inaudible)?

**Parrell Grossman:** I believe can get that for you from the Dept. of Human Services.

**Rep. Potter:** You talked about criminal and civil fraud. Can you give us some examples of criminal and civil fraud?

**Parrell Grossman:** Most of that would come under the False Claims Act, where someone submits a claim to the government, a health care provider and it had false information. The charges were not appropriately incurred. There is federal and state laws and provide for civil penalties in those same circumstances.

**Rep. Potter:** Bill only deals with criminal not civil fraud?

**Parrell Grossman:** Correct. If legislature goes forward with this there may have to be some significant amendments to this legislation. Most states have separate Medicaid fraud statutes

and separate false claims statutes that give the Medicaid Fraud Unit the authority to investigate and prosecute both the criminal and civil cases.

**Rep. Uglem:** You are already doing some work in this area. Would you expect all FTEs for this unit to be new, or would you transfer over existing FTEs?

**Parrell Grossman:** I can barely do what I have to do with the people I have. You could transfer people if you want to.

**Rep. Conrad:** Where do funds come from, the federal government and are they expecting to continue?

**Parrell Grossman:** Excellent question. Don't know where federal funds come from. I think the Dept. of Health and Human Services that provides this money. I'm led to believe that it is going to be for the first 3 years a 90/10 match with 90% paid by federal government and 10% by the state enforcement unit and after that it's 75/25. The funding could always go away.

**Gordy Smith from State Auditor's Office gave information:** Numbers federal government collected were from 2003 and rather old. The federal government had spent \$120 million on this program and has recovered \$268 million. It's better than 2 to 1 they have recovered. North Dakota's share of that is based on the same, it's called Federal Medicaid Assistance Percentage that governs how much of the Medicaid program is going to be funded by the federal government. That has dropped. Don't know what it is currently. In 2006 it was 65.85% of the fed's (inaudible). So essentially what happens is every dollar that's collected to the fraud, better than 1/3 comes back to ND despite the fact we have only put in 10% of the cost for the first 3 years. After 3 years with the program, we'd be paying ¼ of the cost. The success of the program, I doubt it would be eliminated.

**Rep. Conrad:** Could we have a copy of that so I can read it and make sure I understand it.

**Gordy Smith:** I'll run copies of this 2 page finding and provide it to the committee.

**NO OPPOSITION.**

**Chairman Weisz closed the hearing.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1511

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: February 3, 2009

Recorder Job Number: 8527

Committee Clerk Signature

*Vicky Crabtree*

Minutes:

**Chairman Weisz:** Let's take up HB 1511, the one about Medicaid fraud unit.

**Rep. Porter:** I went back and looked when we looked at it before and nothing has really changed. Our MMIS system not complete yet. Dept. testified two years ago testified that there was not a lot of fraud in ND. I think this is the cart before the horse. Fiscal note shows \$77,000 general fund expenditure, we didn't have any general fund expenditure in 2006-2009 and we received \$889,000. To say the unit is going to pay for itself, we really can't because we are already part of the suits they are talking about.

**Rep. Porter:** I move for a DO NOT PASS.

**Rep. Damschen:** Second.

**Rep. Kilichowski:** When we collected that money, did it go back into the department?

**Rep. Porter:** Our share which is represented by these figures, go back into the general fund because that was general fund dollars spent for the Medicaid patient's drugs. The federal government keeps their share.

**Rep. Conklin:** What's MMIS?

**Chairman Weisz:** Medicaid Management Information System.

**Rep. Conrad:** Thought it interesting we are only state without fraud unit? To say we don't have fraud, wish it were true, but I think it is only prudent to have one.

**Rep. Potter:** I don't know if I can vote yes. We really don't know how much fraud we have because we don't have a fraud unit. The cost of this unit would be covered by what you recovery. Seems like a good deal to me.

**Roll Call Vote:** 10 yes, 3 no, 0 absent.

**BILL CARRIER:** Rep. Pietsch

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/20/2009

Bill/Resolution No.: HB 1511

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$77,637	\$698,732	\$140,068	\$660,321
Appropriations	\$0	\$0	\$77,637	\$698,732	\$140,068	\$660,321

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

A medicaid fraud control unit is created in the Office of Attorney General.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of the bill creates a Medicaid Fraud Control Unit in the Office of Attorney General. It authorizes the Office of the Attorney General to operate and supervise the unit's employees.

**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.*

N/A

**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.*

The estimated expenditures for this purpose total \$776,369 which includes 4 FTE's and associated operating costs. The funding for the unit's cost is 90% federal funds and 10% from the general fund for the first three years of operation. After three years the funding is 75% federal funds and 25% from the general fund.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The estimated expenditures for this purpose total \$776,369 which includes 4 FTE's and associated operating costs. The funding for the unit's cost is 90% federal funds and 10% from the general fund for the first three years of operation. After three years the funding is 75% federal funds and 25% from the general fund. The Executive Recommendation did not include funding for the Medicaid Fraud Control Unit.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/27/2009



Date: 2-3-09  
Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1511

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

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

Action Taken ☒ Do Pass ☒ Do Not Pass ☐ Amended

Motion Made By Rep. Porter Seconded By Rep. Damschen

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 FRANTSGOV	✓		REP. ROBERT KILICHOWSKI	✓	✓
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER		✓
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 10 No 3

Absent 0

Bill Carrier Rep. Pietsch

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

Vote on DO NOT PASS

**REPORT OF STANDING COMMITTEE**

**HB 1511: Human Services Committee (Rep. Welsz, Chairman) recommends DO NOT PASS (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1511 was placed on the Eleventh order on the calendar.**

2009 TESTIMONY

HB 1511

#1

## **HB 1511**

Human Services Committee

Rep. Weisz, Chairman

January 28, 2009

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Mr. Chairman, and members of the Human Services Committee, for the record, my name is Representative Mark Dosch from the 32 District.

I come before you today to ask your support of HB 1511. A bill that will truly save taxpayers money.

Medicaid Fraud, we have all hear about it, read about it, seen it on TV. One of the largest Federal programs and one that contains the most fraud. Millions of dollars each year are paid out to individuals or billed by business that are not entitled to this money, resulting in the wasting of resources that should be going to needy individuals.

So what is ND doing about this wide spread fraud?

**ABSOLUTELY NOTHING**

ND is the only State that does not have a Fraud unit. ND is the only state that is doing nothing to prevent fraud. When we do nothing to prevent fraud, I contend that we are encouraging fraud. Laws without enforcement are meaningless. This lack of a fraud investigator makes ND an easy target.

It is a fact, that fraud units collect far more than their costs. This doesn't even take into account the fraud that is prevented because of the deterrent of having an investigator

The best part is that 90% of the cost of this FTE is paid by the federal government.

Please help and protect the integrity of this program, and stop the abuses by supporting this bill.

Mr. Chairman this concludes my testimony, I would be happy to answer any questions.

#2

HOUSE HUMAN SERVICES COMMITTEE  
REPRESENTATIVE ROBIN WEISZ, CHAIRMAN  
JANUARY 28, 2009

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Mr. Chairman and members of the House Human Services Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of Attorney General Wayne Stenehjem in support of House Bill 1511.

The Medicaid Fraud Control Unit was created by Congress and reflected in the Medicare and Medicaid Anti-Fraud Statute of 1977. A Medicaid Fraud Control Unit ("MFCU") is a single identifiable entity of state government, annually certified by the U.S. Department of Health and Human Services. The MFCU has statewide criminal prosecution authority with respect to the detection, investigation, and prosecution of suspected violations of the Medicaid program.

There are MFCUs in 49 states and the District of Columbia. 43 are located within the office of the state Attorney General. North Dakota is the only state that currently does not have a MFCU.

A MFCU is staffed with attorneys, auditors, investigators (licensed peace officers), and support staff. All of these individuals must devote 100 per cent of their time and effort to the Medicaid fraud program and are prohibited by federal law from performing other responsibilities for the Attorney General or any other state government entity.

A MFCU conducts a program for the investigation and prosecution of health care providers who defraud the Medicaid program. A MFCU also reviews investigates and prosecutes complaints of abuse or neglect against residents in health care facilities receiving Medicaid funding and may review complaints about the theft of residents' private funds in these facilities. A MFCU also is charged with investigating fraud in the administration of the Medicaid program.

The federal government funds ninety per cent of the program with a ten per cent state match for the first three years and seventy-five per cent with a twenty-five per cent state match thereafter. This funding includes personnel, equipment, travel, etc. The Attorney General has prepared a fiscal note in this matter.

A MFCU is a unique area of law and expertise. Since the introduction of this legislation I have been attempting to research the program to determine the necessary legislative authority to effectively implement this program. I only have an overview at this time. I, however, have been discussing the MFCU with MFCUs in other states, and reviewing other states' statutes in the event this legislation requires some amendments.

The Attorney General is ready to assume the responsibility for a MFCU, if the legislature so determines.

The Attorney General respectfully asks the House Human Services Committee to give House Bill 1511, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

## ***Operations***

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Our audit of the Office of Attorney General identified the following area of potential improvements to operations:

### **IMPLEMENTATION OF MEDICAID FRAUD CONTROL UNIT**

Operational  
Improvement 06-1

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***Issue:***

The state of North Dakota does not have a Medicaid Fraud Control Unit (MFCU). The first MFCU in the United States was established in 1977. Since that time, 49 states (plus the District of Columbia) have established MFCU's, which are independent divisions separate from the agency running the state's Medicaid program. In most states the MFCU is located in the Attorney General's office since they are responsible for prosecuting Medicaid fraud and patient abuse and neglect cases. To encourage states to establish MFCU's, the federal government will provide 90% of the required funding for the first three years of the MFCU's existence and 75% thereafter. MFCU's require a minimum of 3 full-time employees that are 100% dedicated to the MFCU. These employees include an attorney, auditor, and senior investigator. Clerical and accounting duties would also need to be assumed by personnel within the Office of the Attorney General.

Per review of the United States Office of Inspector General's annual report on MFCU's for fiscal year 2003, a total of 1,507 people are employed by states in MFCU's. Federal funds provided were \$120 million with total recoveries in excess of \$268 million. Recoveries are allocated between the state and the federal government at the state's Federal Medical Assistance Percentage (FMAP). It should be noted that North Dakota's FMAP rate has dropped from 70.42% in federal fiscal year 2000 to 65.85% for federal fiscal year 2006. This change will result in North Dakota paying a greater share of Medicaid payments, but will also result in a higher percentage of any recovery monies staying in North Dakota.

Each state is required to have a Surveillance and Utilization Review Subsystem (SURS). In North Dakota, this is currently set up within the Department of Human Services (DHS). One of the purposes of the SURS division is to identify the providers most likely to commit fraud against the Medicaid program. Nationally, the SURS notifies the MFCU's of potential fraud cases for review. It has been noted from past DHS audits of the Medicaid program that the SURS doesn't have sufficient staff to either investigate or discover all potential fraud cases. The MFCU's can also get case information from referrals, toll free number hotlines, nursing home facilities, and whistleblowers.

**Benefits:**

While the implementation of a new MFCU unit would not directly improve the operations of the Office of Attorney General, it is possible the state may recoup recovery monies in excess of the general fund cost associated with the MFCU. Additional savings would result from the prevention of potential fraud cases once providers become aware of additional steps the state is taking to find and prosecute fraudulent providers. The MFCU would also be responsible for investigating and prosecuting cases of patient abuse – typically at nursing homes.

**Conclusion:**

Based on the above background information, we recommend the Office of Attorney General consider implementing the MFCU division in North Dakota. This process would include asking the Legislature for additional FTE's for the division as well as additional general fund monies for the matching portion of the federal grant monies they would receive.

**Office of Attorney General Response:**

*This office was involved in crafting 2007 Senate Bill No. 2126, the legislation authorizing investigations into alleged Medicaid fraud claims, which provided authority to the Attorney General to bring a civil action against a person violating the act. This legislation was defeated.*

*The office will implement the Medicaid Fraud Control Unit assuming the Legislative Assembly supports the recommendation and provides adequate funding and human resources for the unit.*