

2009 SENATE HUMAN SERVICES

SB 2399

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2399

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 02/10/2009

Recorder Job Number: 9084

Committee Clerk Signature

*Mary K. Monson*

Minutes:

**Senator Lee** Opened the hearing on SB 2399.

**Senator Heckaman** District #23. Introduced SB 2399. This bill fits with some of the bills we heard yesterday. It has to do with hospitals paying for service rankings. This bill came to light by the Citizens Concerned with Safety and Facility Quality. I feel this bill will align well with the safety and quality issues addressed in yesterday's bill.

**Matt Schwartz** Private Citizen testimony. Spoke in support of 2399. See attachment #1.

**Senator Lee** This is a difficult issue as we do not want anyone to be tricked by false advertising yet there are reputable organizations that require a fee that do rankings. What I am trying to say is, just because there is a fee, it does not mean that they are paying for a ranking.

**Schwartz** Yes, I understand what you are saying but I think the key issue here is the sunlight of public disclosure must shine on how that information is developed.

**Senator Lee** Gave example of long term care facilities that deal with similar issues some that have fees and others that do not. It all depends on the evaluator, these ratings are subjective.

**Schwartz** I don't disagree with you, but my concern is when certain ratings organizations who hide information about their data makes the situation more complex. Add to the mix the profits

to be made with ratings. I am not trying to say that they can't do this, I am just asking them to disclose how they have received their information.

**Senator Lee** Are you talking about organizations that pay a fee for membership/participation or that pay for ratings? Is there an intent to use it for self evaluation, self improvement?

**Schwartz** I think there is going to be more testimony later that will answer those questions. I am not trying to do harm to those that are trying to do good for the public, I am concerned about companies deceiving the public.

**Jim Cooper** President/CEO of Medcenter One. Spoke in support of 2339 at the request of Senator Heckaman. See attachment #2. Also suggested some amendments: see attachment #3. The field of medical rankings is relatively new and it is difficult to know what is going on when money is involved.

**Nancy Willis** Vice President of Government Relations and Marketing for St. Alexius Medical Center. Spoke in opposition to 2339. Amendment may allay some of our concerns one of which is the definition of performance review.

**Senator Dever** If it is about marketing, if one of the hospital takes advantage of this and is in the top 5% is the other hospital not in the top 5%?

**Willis** I don't think so necessarily. We are not saying one is and one is not, all we are saying is that based on this organization's data, we are in the top 5%. There are other hospitals in the state that have used this service as well. This data is taken from all over the country, so it is a big deal for ND. Hospitals in ND regularly rank in the top 5%. We have good care in ND.

**Senator Heckaman** You said that you stopped using health grades, when did you do that?

**Willis** Last year. We purchased the right to use their advertisement and verbiage.

**Senator Heckaman** Did you tell the public that you had done that?

**Willis** We did put their website on all of our marketing so that they could see how we derived our information. I think we have a responsibility to show where we derived our information.

**Senator Lee** That is the criteria for the AHRQ. Discussed how health grades arrived at their number.

**Willis** They take the information from AHRQ and create rankings and then allow you pay to use their advertising and logo.

**Senator Lee** I bring that up to differentiate between marketing and patient safety indicators. Discussion about ratings organizations and how they receive and process data.

**Senator Heckaman** In the handout from Mr. Schwartz it said that St. Alexius was one of 164 hospitals to receive this award. Does that mean you were one of 164 to purchase the award or one of 164 given the award?

**Willis** We were one of 164 in that pool whether we chose to purchase the marketing or not.

**Senator Heckaman** Did you have to purchase the marketing in order to get the press release?

**Willis** No, they do send the press release out to all of the newspapers in the country.

**Matt Schwartz** I think the point is that the devil is in the details, even though they use data from Medicare, it is a secret as to how they use the data. That is what they won't disclose. I do not see any place on this paper where it says to go to our website.

**Jim Cooper** Our experience in discussions with health grades is that the best I can tell is that they do use publicly recorded Medicare aggregate data. Their proprietary step is in how they calculate and research and compare and contrast those numbers. We have won awards from them in certain years and not in others. They will tell you how to get your numbers up by consulting with them for a fee. I do think the whole area of health ratings is tough enough to understand without entering the profit mode. I think all this bill requires is that when people advertise a certain rating or licensing that they disclose how much the licensing fee cost.

**Senator Lee** Do you think the amount is as important or just the fact that they paid?

**Cooper** I think if an organization has to disclose that there is a fee, they won't do it.

**Senator Lee** I am always a little leery of putting numbers in statute because then they have to be changed in the future.

**Cooper** I think it should just be any fee in any amount.

**There was no neutral testimony given.**

**Senator Lee** Closed the hearing on SB 2399.

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2399

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 02/10/2009

Recorder Job Number: 9125

Committee Clerk Signature

*Mary K Manson*

Minutes:

**Senator Lee** Opened the discussion on SB 2399. Mr. Cooper has proposed an amendment.

**Senator Dever** I spoke with the people in opposition to the bill and they were more comfortable with the bill when this amendment was proposed.

**Senator Heckaman** I think this goes well with the safety issue and consumer protection health safety issue. I like the way the amendment fits in to the bill. I think it is ok to amend this.

Medicine is a different area than buying a car. This does not cost anybody anything as we are taking out the numbers.

**Senator Dever** Discussed a book he had read about the current state of medical care. We have smarter wiser consumers now and this is a good bill so it will help consumers make informed decision.

**Senator Heckaman** I move the amendment to SB 2399

**Senator Erbele** Second.

The Clerk called the role on the motion to move the amendment **Yes: 5, No: 0, Absent: 1**

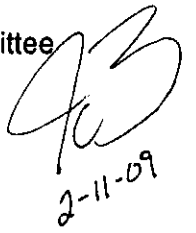
**(Senator Marcellais)**

**Senator Heckaman** I move **Do Pass as Amended.**

**Senator Dever** Second.

The Clerk called the role on the motion to **Do Pass as Amended. Yes: 5, No: 0, Absent: 1.**

**Senator Heckaman will carry the bill.**



Handwritten signature and date: 2-11-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2399

Page 1, line 1, after "facilities" insert "and providers"

Page 1, line 4, after "**facility**" insert "**and provider**" and after the underscored boldfaced period insert:

"1."

Page 1, line 5, after "facility" insert "or provider" and replace "participates in" with "has"

Page 1, line 6, remove "exceeding fifty thousand dollars"

Page 1, line 7, after "facility" insert "or provider"

Page 1, line 8, after "information" insert "stating", after "facility" insert "or provider", and replace "exceeding fifty" with "and stating the amount of that payment made"

Page 1, line 9, remove "thousand dollars" and after the underscored period insert:

"2. Subsection 1 does not apply to a performance review required to maintain licensure or accreditation by governmental or third party payers or to maintain accreditation by a quality assurance organization."

Renumber accordingly



Date: 2-10-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2399

Senate Human Services Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Heckaman Seconded By Sen. Erbele

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) 5 No 0

Absent 1

Floor Assignment \_\_\_\_\_

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

Date: 2-10-09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2399

Senate Human Services Committee

Check here for Conference Committee

Legislative Council Amendment Number 90996.0101 Title .0200

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Sen. Heckaman Seconded By Sen. Dever

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) 5 No 0

Absent 1

Floor Assignment Senator Heckaman

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

**REPORT OF STANDING COMMITTEE**

SB 2399: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2399 was placed on the Sixth order on the calendar.

Page 1, line 1, after "facilities" insert "and providers"

Page 1, line 4, after "facility" insert "and provider" and after the underscored boldfaced period insert:

"1."

Page 1, line 5, after "facility" insert "or provider" and replace "participates in" with "has"

Page 1, line 6, remove "exceeding fifty thousand dollars"

Page 1, line 7, after "facility" insert "or provider"

Page 1, line 8, after "information" insert "stating", after "facility" insert "or provider", and replace "exceeding fifty" with "and stating the amount of that payment made"

Page 1, line 9, remove "thousand dollars" and after the underscored period insert:

"2. Subsection 1 does not apply to a performance review required to maintain licensure or accreditation by governmental or third party payers or to maintain accreditation by a quality assurance organization."

Renumber accordingly

2009 HOUSE HUMAN SERVICES

SB 2399

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2399

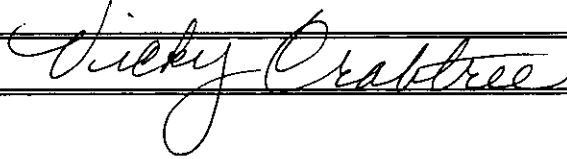
House Human Services Committee

Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: 11197

Committee Clerk Signature



Minutes:

**Chairman Weisz opened the hearing on SB 2399.**

**Sen. Joan Heckaman, district 23, sponsored and introduced the bill:** This concerns medical facilities paying for their service rating. This bill came to light from a citizen concerned about facilities being able to purchase facility quality ratings over and above the ratings given them by a company. This bill aligns with our desire for quality and safety for our residents in our state. If you look at the bill itself, it has been amended by its original version and in the original version we just had medical facilities and the word, provider, was added onto this so an individual provider cannot purchase a rating (inaudible) or a doctor. What this bill says if they are going to advertised and purchased that rating over and above what is given to them, they must tell someone that they purchased that rating from a company. You can go on-line and purchase ratings. We added subsection 2 to Section 1 on here so this will not interfere with the performance rating that medical providers or facilities us as a licensure.

**Chairman Weisz:** Is there a problem now? Why did you bring this bill forward?

**Sen. Heckaman:** There has been facilities in our state using this and not notifying the public that they purchased those ratings. I think we have heard in my visit with the medical facilities

and this has been being done in the last year and a half in our state. I don't think we want them to have that opportunity to go there anymore.

**Rep. Porter:** My understanding of the situation is that they are not purchasing the rating, they are purchasing the license to use whatever rating they got.

**Sen. Heckaman:** There's a little bit of confusion in that. They can purchase that, but I heard from a medical provider in the state that they also had the opportunity to buy the rating up to a higher level.

**Rep. Nathe:** We talked about the public notices as far as letting people know. What do they do, an advertisement on TV that they paid for this rating?

**Sen. Heckaman:** That's true. There might be a big banner outside the medical facility and says, we are the number one heart doctor in the nation or we are in the top five provider for emergency services in our state. When they advertise those and have purchased the right to advertise that and it is over and above the ratings they have already received. They are the company also that requires them to purchase that. Some of our medical facilities have spent significant dollars purchasing that. But, they don't put that disclaimer on the banner right now and this says they have to do that.

**Rep. Holman:** I noticed in the first bill it had a fee of \$50,000 and is that money changing hands.

**Sen. Heckaman:** I think at least that and it could have been more. I don't want them paying any money for that and I think that is a misuse of funds.

**Matt Schwartz:** See Testimony #1.

**Janelle Johnson, Innovation Officer at Med Center One:** See Testimony #2.

**Chairman Weisz:** After you decline the purchasing the award, did you get the award the next year?

**Janelle Johnson:** You'll continue to get these announcements saying these are the awards that you want. We get e-mails that will say, you won this, this, and this and you found out your competition is not looking to publicize that. Even if they won the award they are not going to buy the right to advertise, then in essence you are the only one advertising the award.

**NO OPPOSITION.**

**Chairman Weisz closed the hearing.**

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2399

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 18, 2009

Recorder Job Number: 11198

Committee Clerk Signature

*Vicky Crabtree*

Minutes:

**Chairman Weisz:** Let's take up 2399

**Rep. Holman:** I'll do a Do Pass on SB 2399.

**Rep. Potter:** Second.

**Roll Call Vote:** 12 yes, 0 no, 1 absent, Rep. Hofstad.

**MOTION CARRIED DO PASS.**

**BILL CARRIER:** Rep. Holman.



Date: 3-18-09

Roll Call Vote #:

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2399**

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. Holman Seconded By Rep. Potter

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	A		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 12 No 0

Absent 1 Rep. HOFSTAD

Bill Carrier Rep. Holman

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

REPORT OF STANDING COMMITTEE (410)  
March 18, 2009 6:20 p.m.

Module No: HR-49-5289  
Carrier: Holman  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2399, as engrossed: Human Services Committee (Rep. Weisz, Chairman)  
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed SB 2399 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2399

**SENATE BILL 2399**

Human Services Committee

Testimony by Mathew C. Schwarz

February 10, 2009

Good morning Madam Chair Lee and members of the Human Services Committee.

My name is Matt Schwarz. I am here to speak in support of Senate Bill 2399 regarding public disclosure when a medical facility makes payments in relation to ratings they receive from an organization. The language in the bill needs to be revised somewhat as it came back from the Legislative Council a little different than I expected. Senator Heckaman assured me it can be fixed by an amendment.

This bill is a direct result of my family's experience.

My wife Marcia and our daughter Jessica live in District 47, Bismarck. They both have Myotonic Muscular Dystrophy. Jessica is on life support and Marcia's health has also deteriorated where she has serious physical limitations and uses a wheelchair. Myotonic Muscular Dystrophy is a complex neuromuscular disease.

Treatment of our family's medical needs over the last 30 years has taken us to Minneapolis, St. Paul, & Rochester, MN; to Denver Colorado; and to Houston, TX. We have substantial experience with many medical providers

and are knowledgeable and active participants in the medical care of our family. We do our research on medical provider's expertise and find it varies despite the marketing programs offered. Interestingly enough, we find medical providers really good in certain areas often don't need expensive marketing programs to draw patients. They are usually so busy one can't get in for an appointment unless referred by a reputable primary care provider.

So when I saw the banner (photo attached to testimony) I really had to ask myself? "In the top 5% of all hospitals in the nation" here in Bismarck? That would be quite an achievement and I wondered after reading the book "The Doctors Mayo" why this medical facility didn't give me the same feeling. I learned in high school to be careful when using all-inclusive language with words like all, every, etc.

Our family, I want to point out, has received excellent, as well as not so excellent, care from medical providers in Bismarck. It varies depending on the people, not only in Bismarck but in Minnesota, Colorado, and Texas too. Believe me, I know, having one child on life support and another that died.

So when I first saw this banner, it was a clear to me something was amiss. After doing some research it became more clear to me that the marketers, sales people, and administrators, in their zeal were behind this over sold proclamation.

Are hospital ratings safe? Refer to the copy attached to this testimony. "Some hospitals are paying the very companies that rate them." "The rating companies say they offer unbiased information on the quality of the


hospital's care. But if they're making money from the ratings, can the ratings be trusted?"

"Dr. Harlan Krumholz, a cardiologist and professor at Yale University School of Medicine who helped develop the criteria the federal Centers for Medicare & Medicaid Services uses to evaluate hospitals – the same data Healthgrades says it draws from – has serious doubts about Healthgrade's methods, not only because they charge for the data, but because of their results."

One of the problems associated with the ratings is public disclosure of the data and how it is used. Manipulating data to get a desired result is a motive when money is involved.

My intent is not to interfere with self improvement programs like the Nurse Magnate program. Medical providers often need to and should invest in programs to improve patient outcomes and safety. The key difference with legitimate programs is the sunlight of full disclosure.

The ratings program for profit is particularly troublesome for local community hospitals where the media war and competition are the most intense. When one facility gets a high rating, there is intense pressure to get the same or better rating from the other. When the same rating organization peddles the same program for profit, there is a conflict of interest in the outcome of the rating.



In conclusion, what is just as appalling is the waste of scarce financial resources in this activity. Community hospitals should be spending their money more wisely!

Our family asks you to support SB 2399.

I'll be happy to answer any questions.



# St. Alexius in top 5 percent of acute-care hospitals

As St. Alexius Medical Center CEO Dick Tschider stood in front of a group of hospital workers Tuesday, he urged them to help the hospital become one of the top 10 in the country.

His message came after the hospital received the 2004 Distinguished Hospital Award for Clinical Excellence from HealthGrades — a national healthcare-quality ratings, information and advisory services company. Of the 4,700 hospitals nationwide that were rated, St. Alexius was one of 164 to receive the award.

A HealthGrades representative said with the high rating, St. Alexius ranks among the top 5 percent of acute-care hospitals.

A high rating was determined by looking at the quality of cardiac, stroke, orthopedic, respiratory and vascular care. Also, prostate, cholecystectomy, treatment of sepsis, bowel obstruction and gastrointestinal bleeding procedures were evaluated.

"To be in the top 5 percent," Tschider said, "where do we go from here? We have set a goal of being one of the top 10 hospitals in the United States and we'll get there. The difference between good and very good is just a little bit more."



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## Are hospital ratings safe?

Data suspect, NYU doc says

By Christian Livermore  
Times Herald-Record  
November 05, 2008

Text Size: A | A | A

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Type the name of a hospital into a Web browser, and among the first results will be companies that rate hospital care. A growing number of for-profit businesses issue lists of top hospitals and rate them on procedures from heart attack care to total hip replacement.

But if you can think you can trust the ratings, consider this: Some of the hospitals are paying the very companies that rate them.

The rating companies say they offer unbiased information on the quality of a hospital's care. But if they're making money from the ratings, can the ratings be trusted?

"The data is suspect," said Dr. Bernard A. Birnbaum, senior vice president, vice dean and chief of hospital operations at NYU Langone Medical Center in Manhattan. "To be totally objective, there should be absolutely no transfer of funds."

### Conflicts of interest?

HealthGrades rates companies with one, three or five stars on a range of procedures, and also names distinguished hospitals in clinical excellence and patient safety. It rates about 5,000 hospitals nationwide.

The company does not charge to rate the hospitals, but it does charge up to \$155,000 for hospitals to use their ratings in advertising and promotions, and it also offers to consult with hospitals to help them improve.

The company does not discuss its charges, but they don't impact its ratings, said Scott Shapiro, senior vice president of corporate communications and marketing for HealthGrades.

"Hospitals that rate well, just like someone might be able to license a reprint of an article, they would be able to purchase the ability to reprint those ratings in their marketing and advertising," he said. "There's no conflict of interest because HealthGrades rates every hospital in the country independently. Every hospital is rated exactly the same way based on objective data submitted to the federal government."

But HealthGrades' financial relationship with some of the hospitals it rates troubles Dr. John Santa, director of Consumer Reports Health Ratings Center.

"Since we rate hospitals, I would not be even allowed to have a meal at a hospital and rate it," he said.

Thomson Reuters charges hospitals \$1,200 for detailed results of its 100 Top Hospitals, and also offers consulting services, but doesn't charge hospitals to use the ratings to promote themselves.

"It's not our business model," said Jean Chenoweth, senior vice president of performance improvement and 100 Top Hospitals at Thomson Reuters. "It raises questions about whether the award is really valid or not."

Dr. Harlan Krumholz, a cardiologist and professor at Yale University School of Medicine who helped develop the criteria the federal Centers for Medicare & Medicaid Services uses to evaluate hospitals, has serious doubts about HealthGrades' methods, not only because they charge for use of the data, but because of their results:

In a 2002 Yale study of HealthGrades conclusions, Krumholz and his research partners found that there was little or no statistical difference in mortality rates between hospitals that received one star from HealthGrades and those that received five stars.

He also said that HealthGrades's business plan can mislead consumers. "People are going to see that Hospital A is advertising and Hospital B is not, and they're going to assume Hospital B didn't do well, when Hospital B may just not have deep pockets," he said.

### Who to trust

And what of the ratings themselves? Different companies use different criteria to rate hospitals, leading to greatly varying results.

U.S. News & World Report's Best Hospitals 2008 report rates Mount Sinai Medical Center in Manhattan, NYU, Orange Regional Medical Center and St. Luke's Cornwall Hospital among its best.

HealthGrades names St. Luke's and Benedictine Hospital as hospitals of clinical excellence, but doesn't name either Mount Sinai or NYU among its best. Thomson Reuters' national benchmarks list names none

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of them.

"For this very reason, health-care ratings can be very confusing to consumers," said St. Luke's spokeswoman Judi Stokes. "Every rating organization works with the same information that hospitals are required to report, but massages it to fit their own criteria."

Benedictine, NYU, Orange Regional and St. Luke's do not pay to use any ratings company's rankings, hospital representatives said. A Mount Sinai representative declined a request for an interview.

NYU's Birnbaum, Yale's Krumholz and others say that measuring hospital care can be a constructive process, resulting in better outcomes for patients, but the criteria they think are important aren't always used, such as those of the nonprofit National Quality Forum or University HealthSystem Consortium, which include effectiveness of care, patient safety and how patient-centered a hospital is.

"I don't think that any of the ratings systems that are out there right now can be used as a determinant," said Neil Abitabile, president of the Northern Metropolitan Hospital Association. "They're based on data that was really never intended to be used in the way it's being used."

The bottom line, Birnbaum said, is that patients should view ratings companies as a starting point for finding a hospital, not the deciding factor.

"If you see a hospital you've never heard of, and you change your care delivery system based on that Web site, I think that would obviously be quite foolish," he said. "Patients want to have access to easy-to-interpret, authoritative and objective data."

[cilvermore@th-record.com](mailto:cilvermore@th-record.com)

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sasharose  
Member since: 06/14/2008

On November 05, 2008 at 10:19 AM, sasharose said:

I think what disturbs me is the amount of money collected by these companies to use their "healthgrade ratings" for advertising. It's too confusing for the folks that have not worked in hospitals. and we all know that we are sometimes surprised by the ratings, because Bill, you are right!! Full Message



bill  
Member since: 11/22/2006

On November 05, 2008 at 7:39 AM, bill said:

Anyone who works in a hospital can tell you these ratings are a farce. The inspectors are burned out doctors and nurses, looking to cash in on their insider knowledge without having to do any work. The hospitals even hire former rating company execs as CONSULTANTS, to improve their results! Natur... Full Message

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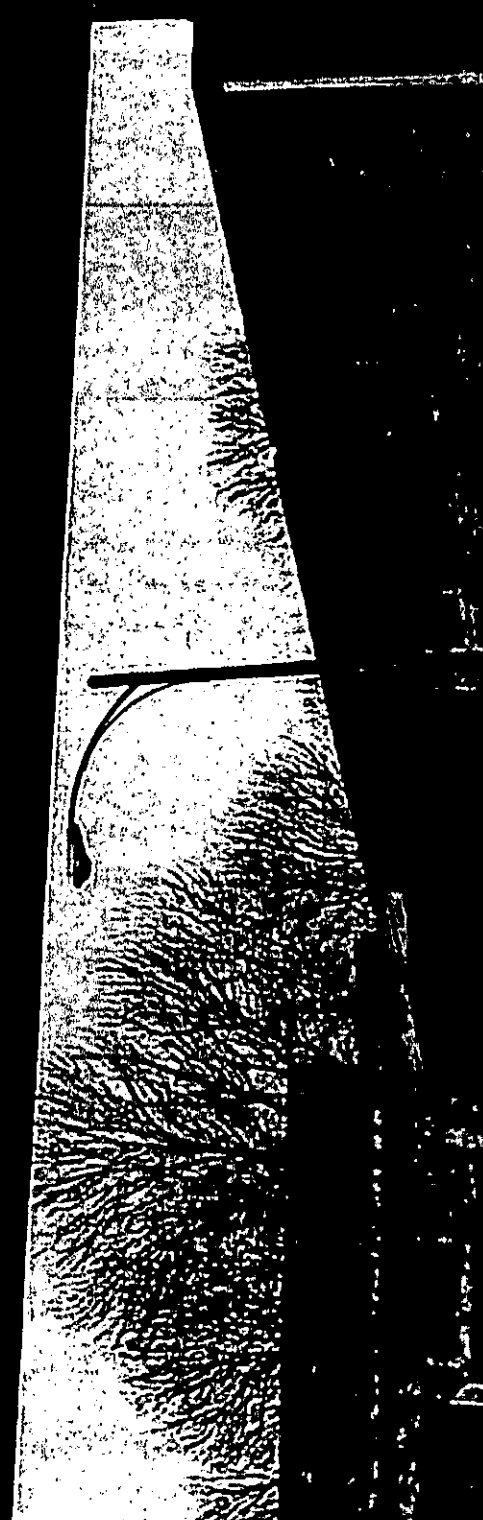
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North Dakota 2009 Legislative Session  
Senate – Human Services Committee  
Testimony in favor of SB 2399  
February 10, 2009

Chairman Lee and Members of the Senate Human Services Committee:

My name is James Cooper. I am here to testify on Senate Bill 2399 at the request of Senator Heckman, the primary bill sponsor. I am President/CEO of Medcenter One.

I am here to provide clarification as to how one of the companies markets and sells their quality ratings to North Dakota hospitals. Let me step you through the process that Medcenter One has experienced related to one of these companies that sell quality ratings.

1. The company notifies the hospital by mail that they have won an award.
2. The sales team from this company contacts the hospital to set up a meeting.
3. A sales representative meets with hospital leadership and provides a quote of the cost of using the award in marketing. The sales representative indicates that the quote includes a trophy and the public announcement and the ability to communicate the award internally and publicly. Since the award is licensed, the company requires all healthcare entities to pay for the right to notify anyone of the award. In fact, Medcenter One can not officially tell our own employees that we won an award. The use of the award is protected, I consulted with legal counsel and he indicated that for government purposes, I could disclose information concerning these awards to you today.
4. If the hospital leadership rejects the price quote, the company typically counters with a lower price. The hospital and the company can bargain on the cost of the license. In an e-mail from Health Grades in December 2008, a sales representative




says, "it's the end of the year and the current economy has me discounting our program greatly. If you have anything left in the budget do you think we could strike a deal? You'll have the market to yourself."

5. If the hospital chooses to purchase the award, the license contract is for one year.

After the company has provided the above sales pitch to hospitals that qualified for the award, they begin to contact hospitals who did not qualify. Since there is an incredible amount of award categories, Medcenter One has also received some of these marketing calls. As hospital leadership you are told that you did not qualify for this year's award in a certain category, but if you would like to qualify next year, you can hire them as consultants to assure that you will qualify next year.

When I came to Medcenter One I started to ask some important questions similar to the process that Mathew described in his testimony earlier. Medcenter One management and Board of Directors decided over six years ago that we would no longer be involved with this process of purchasing marketing rights to quality awards because:



1. The criteria for the award are secret. Medcenter One contacted the company and asked that they disclose the selection criteria. The company refused to reveal what statistics are used and how they are calculated to determine which hospitals qualify. There is no transparency in the process.
2. Medcenter One felt that it was wasteful to pay an out-of-state company promoting marketing schemes scarce healthcare dollars just for the opportunity to claim an award. The marketing scheme fee is only for the ability to promote the award publicly. The fees range anywhere from \$30,000 to \$50,000 per category. In 2006, Medcenter One was offered a special price of \$32,500 to promote a single specialty award. This fee is in addition to any advertising costs that are incurred for developing and placing ads or TV commercials.
3. Public ratings are now readily available from the Federal Government and North Dakota Health Care Review. For instance, this last August, Medcenter One was awarded the 100 Top Hospitals® Performance Improvement Leadership Award by an agency that works directly with the Federal Government to recognize high



quality healthcare institutions. The data and analysis are transparent and independent and Medcenter One pays no fee to tell others about the quality care provided in North Dakota.

Make no mistake, paying for the use of these types of awards increases the cost of healthcare services in North Dakota. Senate Bill 2399 asks for transparency and public disclosure of costs associated with a performance review that results in the receipt of a rating.

Senator Heckman, thank you for asking me to appear today and thank you to the Senate Human Services Committee for allowing me the opportunity to describe these award processes. I would be happy to answer any questions you have for me at this time.





# HEALTH GRADES<sup>®</sup> PROCESS

**Step 1:**  
Mail Notification



**Step 2:**  
Sales Contact



**Step 3:**  
Price Quote



**Step 4:**  
Price Bargain



**Step 5:**



YOUR HOSPITAL IS A RECIPIENT OF THE  
**HEALTHGRADES 2009  
PATIENT SAFETY  
EXCELLENCE AWARD™**

THIS AWARD REFLECTS THE FINDING THAT  
YOUR HOSPITAL PLACED WITHIN THE  
**TOP 5% OF THE NATION'S HOSPITALS**<sup>1</sup>

IN HEALTHGRADES' SIXTH ANNUAL *PATIENT SAFETY  
IN AMERICAN HOSPITALS* STUDY, WHICH ANALYZED  
PERFORMANCE IN 12 PATIENT SAFETY INDICATORS.<sup>2</sup>

Call 800.940.4179 to find out how you can strategically leverage this significant recognition during our upcoming national announcement and throughout the year to build your brand, increase market share and communicate effectively with payers and employers.

To learn more about the HealthGrades 2009 Patient Safety Excellence Award,  
please visit our Web site: [www.healthgrades.com/newratings](http://www.healthgrades.com/newratings)



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<sup>1</sup> Patient safety indicators developed by the Agency for Healthcare Research and Quality.



**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment will clarify that the bill is applicable to:

- Entities that sell ratings as well as persons and
- Providers of medical services as well as facilities.

The amendment also removes “exceeding fifty thousand dollars” as a minimum amount and requires the facility or provider disclose in a public notice the amount of the payment for the rating in any promotional or marketing activities.

The new bill language inserted at the end of the bill excludes the disclosure requirement for performance reviews required to maintain licensure or accreditation by government (Medicare, Medicaid, Public Health Service, etc.) or third party payers (Blue Cross Blue Shield, etc.) or to maintain accreditation by quality organizations (Joint Commission on Accreditation of Hospitals known as JCAHO, American College of Surgeons, Commission on Accreditation of Rehabilitation Facilities, Magnet Nursing Accreditation, etc).

PROPOSED AMENDMENTS TO SENATE BILL NO. 2399

Page 1, line 5 after "facility" insert "or provider"

Page 1, line 5 replace "participates in" with "has"

Page 1, line 6 after "fee" remove "exceeding fifty thousand dollars"

Page 1, line 6 after "person" insert "or entity"

Page 1, line 7 after "facility" insert "or provider"

Page 1, line 8 after "facility" insert "or provider"

Page 1, line 8 and 9 after "payment" replace "exceeding fifty thousand dollars" with "and the amount of that payment"

Page 1, line 9 after "person" insert "or entity"

Page 1, line 9 after "rating." insert:

**SECTION 2. Medical facility performance reviews and ratings - Exemptions.** The provisions of section 1 of this chapter shall not apply to performance reviews required to maintain licensure or accreditation by governmental or third party payers or to maintain accreditation by quality organizations.

Renumber accordingly

**TESTIMONY ON SB 2399  
PROVIDED BY  
NANCY R. WILLIS, VICE PRESIDENT  
GOVERNMENT RELATIONS & MARKETING  
ST. ALEXIUS MEDICAL CENTER, BISMARCK**

Madame Chair, Members of the Committee, my name is Nancy Willis. I am Vice President of Government Relations and Marketing for St. Alexius Medical Center in Bismarck.

I am here this morning on behalf of our organization, which includes Garrison Memorial Hospital in Garrison, as well as Community Memorial Hospital in Turtle Lake and primary care clinics in Bismarck, Mandan, Garrison, Minot and Washburn.

I would like to testify in opposition to SB 2399. There are a number of reasons that we believe this bill is confusing and unnecessary:

- The term “performance review” is confusing. Hospitals are required to be accredited and their quality ascertained in order to accept Medicare patients. That accreditation is done by the state and by organizations that have been deemed by the Centers for Medicare and Medicaid to represent them in conducting surveys to ascertain this quality. These activities are mandatory for hospitals to accept Medicare patients and over the years have increased significantly in cost. This activity would be considered a “performance review.” We already are required to post specific information publicly by the Federal Government in conjunction with these surveys and our accreditation.
- When we conduct our annual financial audits, we are in essence conducting a “performance review” of our accounting practices. Such audits are required by ND laws that govern corporations and this information is disseminated publicly through our Annual Reports. Often the completion of these audits affect the organization’s bond and other financial “ratings.” The cost of these audits also can be significant depending on the size of the organization.
- If <sup>this bill is</sup> ~~you are~~ referring to companies that conduct research into hospital’s performance and then assign ratings, there are a number of these including Thomson Reuters, J.D. Power and Associates, HealthGrades, etc. Organizations like Thomson Reuters and HealthGrades use publicly available payer data to compare patient outcomes. By that I mean, they use public data to compare hospitals on their mortality rates (how many people die or not during hospitalization) on outcomes’ rates (how did people do after they were discharged), on number of hospital acquired infections, etc.
- I am not aware of any healthcare ratings company that charges for “completing a rating.” Some of these organizations charge for use of their logo and certain verbiage in marketing materials, to ensure accuracy of their company name and to ensure that in a competitive environment organizations do not take the ratings’

criteria out of context to unethically promote themselves. Many of these organizations monitor markets to ensure that their information is not taken out of context and to ensure that organizations that do not rate highly, cannot use similar graphic materials to mimic their brand or information, which would create confusion and misinformation with the public. I'm sure for example, the state of ND has policies and criteria governing the use of the State Seal. So, in essence, their fees, if an organization chooses to pay them, is to ensure that the public is protected from claims that are unfounded.

- If a healthcare organization rates highly based on this public data and chooses not to pay for use of the ratings' company logo, organizations still are "rated" regardless of whether or not they use the company's identifying information. St. Alexius for example, has received notification from HealthGrades that based on our data related to wrong site surgeries; hospital acquired infections, etc. we are ranked among the top 5% of safest hospitals in the nation. That rating stands whether or not we pay to use HealthGrades logo or verbiage. They make it available publicly on their website.
- The fact that some of our North Dakota hospitals have been successful enough to attain high independent ratings regarding their service offerings and quality scores should in no way be diminished by adding a disclaimer that a fee might have been paid to allow use of the third party's endorsement. Marketing their use is totally different than achieving the rating.. The accomplishment in achieving these ratings is a testament to the hard work put forth by hospitals' providers and staff and the dedication they have in providing top quality care to all those that seek care within its walls.
- Fee's that may be paid are to market the third party's endorsement of the accomplishment, not to pay for the rating. The ratings are an independent review of a hospitals performance. There may be hospitals in North Dakota that are not able to attain these high ratings, based on their reported data. It would be unfair to imply by disclaimer that the one's that have, have done so by paying for them.
- It seems unreasonable that hospitals would be singled out for this notice, when car dealers, banks and other industries pay to have J.D. Powers and Associates survey their customers in order to use their logo and name – basically a third party endorsement. It seems that if there is a concern with payment for the use of quality ratings companies names, logos and endorsements, all businesses should be treated equally.

#1

Testimony to the House Human Services Committee

On **SENATE BILL 2399**

by Mathew C. Schwarz

March 18, 2009

Good morning Chairman Weisz and members of the Human Services Committee.

My name is Matt Schwarz. I am here to speak in support of Senate Bill 2399 regarding public disclosure when a medical facility makes payments in relation to ratings they receive from an organization. The language in the original bill was amended in the Senate to better reflect its intent. It passed unanimously.

This bill is a direct result of my family's experience.

My wife Marcia and our daughter Jessica live in District 47, Bismarck. They both have Myotonic Muscular Dystrophy. Jessica is on life support and Marcia's health has also deteriorated where she has serious physical limitations and uses a wheelchair. Myotonic Muscular Dystrophy is a complex neuromuscular disease.

Treatment of our family's medical needs over the last 30 years has taken us to Minneapolis, St. Paul, & Rochester, MN; to Denver Colorado; and to Houston, TX. We have substantial experience with many medical providers and are knowledgeable and active participants in the medical care of our family. We do our research on medical provider's expertise and find it varies

despite the marketing programs offered. Interestingly enough, we find medical providers really good in certain areas often don't need expensive marketing programs to draw patients. They are usually so busy one can't get in for an appointment unless referred by a reputable primary care provider.

So when I saw the banner (photo attached to testimony) I really had to ask myself? "In the top 5% of all hospitals in the nation" here in Bismarck? That would be quite an achievement and I wondered after reading the book "The Doctors Mayo" why this medical facility didn't give me the same feeling. I learned in high school to be careful when using all-inclusive language with words like all, every, etc.

Our family, I want to point out, has received excellent, as well as not so excellent, care from medical providers in Bismarck. It varies depending on the people, not only in Bismarck but in Minnesota, Colorado, and Texas too. Believe me, I know, having one child on life support and another that died.

So when I first saw this banner, it was a clear to me something was amiss. After doing some research it became more clear to me that the marketers, sales people, and administrators, in their zeal were behind this over sold proclamation.

Are hospital ratings safe? Refer to the copy attached to this testimony. "Some hospitals are paying the very companies that rate them." "The rating companies say they offer unbiased information on the quality of the hospital's care. But if they're making money from the ratings, can the ratings be trusted?"

“Dr. Harlan Krumholz, a cardiologist and professor at Yale University School of Medicine who helped develop the criteria the federal Centers for Medicare & Medicaid Services uses to evaluate hospitals – the same data Healthgrades says it draws from – has serious doubts about Healthgrade’s methods, not only because they charge for the data, but because of their results.”

One of the problems associated with the ratings is public disclosure of the data and how it is used. Manipulating data to get a desired result is a motive when money is involved.

My intent is not to interfere with self improvement programs like the Nurse Magnate program. Medical providers often need to and should invest in programs to improve patient outcomes and safety. The key difference with legitimate programs is the sunlight of full disclosure.

The ratings program for profit is particularly troublesome for local community hospitals where the media war and competition are the most intense. When one facility gets a high rating, there is intense pressure to get the same or better rating from the other. When the same rating organization peddles the same program for profit, there is a conflict of interest in the outcome of the rating.

In conclusion, what is just as appalling is the waste of scarce financial resources in this activity. Community hospitals should be spending their money more wisely!

Our family asks you to support SB 2399.

Thank you for your time and I'll be happy to answer any questions.



# ● Hospitals earn high marks

By SARA KINCAID  
*Bismarck Tribune*

Bismarck's hospitals have received high marks from a health-care ratings company.

The company gave St. Alexis Medical Center top marks in cardiac and pulmonary care, for which it received specialty excellence ratings. Medcenter One received top marks in vascular care, for which it received a specialty excellence rating.

St. Alexis also received a five-star rating from HealthGrades for clinical excellence in coronary bypass surgery, coronary interventional procedures, back and neck surgery, treatment of heart failure, chronic obstructive pulmonary disease and community acquired pneumonia.

"St. Alexis Medical Center is committed to providing the high quality care that is recognized with this prestigious recognition," said Andrew Wilson, St. Alexis Medical Center president and CEO.

Medcenter One received five-star ratings in carotid endarterectomy, heart failure, resection/replacement of abdominal aorta and respiratory failure.

"We work very hard in all these

areas to get very good outcomes," Medcenter One president and CEO Jim Cooper said.

Facilities are given a five-star, three-star or one-star rating for how it diagnoses and performs procedures. The star ratings are equal to better than expected, as expected and worse than expected.

HealthGrades surveys more than 5,000 hospitals each year. It uses Medicare data to evaluate facilities, and facilities do not ask to be evaluated, St. Alexis spokeswoman Jamie Driscoll said.

If a hospital wants to promote its HealthGrades rating, it must buy a license from HealthGrades, Cooper said. Medcenter chose not to buy a license and spend the money on staff, Medcenter spokeswoman Kris Magstadt said. Medcenter One provided its ratings after a request from the Tribune.

The 2007 HealthGrades ratings for all hospitals nationwide are available, free of charge, on the organization's Web site, located at [www.healthgrades.com](http://www.healthgrades.com).

*(Reach reporter Sara Kincaid at 250-8251 or [sara.kincaid@bismarck-tribune.com](mailto:sara.kincaid@bismarck-tribune.com).)*



**Medcenter One**

#2

*medcenterone.com*

North Dakota 2009 Legislative Session  
House – Human Services Committee  
Testimony in favor of SB 2399  
March 18, 2009

Chairman Weisz and members of the House Human Services Committee:

My name is Janelle Johnson. I am here to testify on Senate Bill 2399 at the request of Senator Heckman, the primary bill sponsor. I am the Innovation Officer at Medcenter One.

I am here to provide clarification as to how one of the companies markets and sells their ratings to North Dakota hospitals. Let me step you through the process that Medcenter One has experienced related to these companies that sell ratings.

1. The hospital is contacted indicating that they have won an award.
2. The sales team from this company contacts the hospital to set up a meeting.
3. A sales representative meets with hospital leadership and provides a quote of the cost of using the award in marketing. Since the award is licensed, the company requires all healthcare entities to pay for the right to notify anyone of the award.
4. The sales representative indicates that the quote includes a trophy and the public announcement and use of the award.
5. If the hospital leadership rejects the quote, the company counters with a lower price.
6. If the hospital chooses to purchase the award, the contract is for one year.

After the company has provided the above sales pitch to hospitals that qualified for the award, they begin to contact hospitals who did not qualify. As hospital leadership you are told that you did not qualify for this year's award in a certain category, but if you would like to qualify next year, you can hire consultants from their company to assure that you will qualify next year.

Medcenter One was pulled into this award scheme prior to the current administration. It was thought that the public would like to know that Medcenter One had won an award in a given area. Medcenter One staff started to ask some compelling questions similar to the process that Mathew described in his testimony earlier.

Medcenter One decided five years ago that we would no longer be involved with this company because:

1. The criteria for the award are secret. The company will not reveal how the statistics are calculated to determine which hospitals qualify. There is no transparency in the process.
2. Medcenter One felt that it was wasteful to pay an out of state company scarce healthcare dollars just for the opportunity to claim an award.
3. Public ratings are now readily available from the Federal Government and North Dakota Health Care Review. For instance, this last August, Medcenter One was awarded the 100 Top Hospitals® Performance Improvement Leadership Award by an agency that works directly with the Federal Government to recognize high quality healthcare institutions. The data and analysis are transparent and independent and Medcenter One pays no fee to tell others about the quality care provided in North Dakota.

Make no mistake, paying for the use of these types of awards increases the cost of healthcare services in North Dakota. Senate Bill 2399 asks for transparency and public disclosure of costs associated with licensing cost for these awards.

Senator Heckman, thank you for asking me to appear today and thank you to the House Human Services Committee for allowing me the opportunity to describe these award processes. I would be happy to answer any questions you have for me at this time.