2011 HOUSE HUMAN SERVICES

HB 1296

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1296
January 17, 2011
Job #12951

☐ Conference Committee

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz: Opened the hearing on HB 1296.

Rep. Kasper: Jim Kasper from district 46 in Fargo introduced the bill. I am a licensed insurance agent and do sell health insurance and have for 25 years and this is in an area I have a business in. I'd like to share the how competition works in North Dakota in the health insurance marketplace and where the difficulties are as I see them and why I have introduced this bill. Under current groups in ND of 100 or more, we have current statute which I was a co-sponsor of the bill back in the 57th legislative session on health insurance utilization reports. What that bill dealt with was groups of 100 or larger where by the employer could obtain claims experience for his or her group. When you are competing in the health insurance market and you are looking to see if you want to change insurance carriers, the key data that you need to have is your claims experienced. What were the premiums and claims were paid, what type of claims did you have, are there any on-going claims, cancers that are recurring, are there heart attacks are there blood pressures, the whole nine yards. You need full disclosure in order for you to shop as an employer. The new potential insurance carrier needs to have information on what the risk in that group is. Look at ages, health history, claims, number of participants and so on and the actuaries of any insurance company will make a decision, do we want to make an offer for this risk. Then come up with premiums with their actuarial guess on what the premiums ought to be for the next 12 months. It is important because the incumbent insurance carrier already has all of that information. To give a somewhat opportunity for competition you need to disclose claims and all of that information at the request of the employer. If a group wants to look at other alternatives besides health insurance, I will provide them with data information on what we are going to ask from the current insurance carrier. North Dakota law says that current insurance carrier must provide the information. Where I see the problem is in groups of 50 and less. My testimony relates to 50 or more. In groups of 50 or less you have 47, 30, 20, 5 employees and wish to have another insurance take a look at a proposal for you, one of the things you would like to have is your claims experience. I realize in smaller groups you cannot become as detailed. Example: If you have a group of 5 you would not provide that employer as detailed information as you would a group of 100 because it would be easy for the employer to identify who that employee is that that risk belongs to and those costs belong to. We don't want to put that employer in a situation of knowing too much which might influence whether that employee stays hired. We want to

protect the identify of claimants, but in the same token when an insurance company wishes to look at a proposal for a smaller group, if you have little or no information, it is difficult to determine what type of a risk that you are contemplating. So this bill simply says that for small groups under 50, we would provide claims information at the request of the employer, so you could have some information used for quoting for other insurance companies. There may need to be some tweaking in this bill to further protect the identities of employees in smaller groups, but I would hope you would give this favorable consideration. This has nothing to do with at this time with the PPAC, the federal health law. I just heard in IBL we don't know if there will be an outside market if PPAC is totally implemented, which means will there be insurance companies that can offer products outside of exchange or will all of the products in a small market, will they have to go through the exchange? That decision has not been made and it is ambiguous at this point and time what will happen.

Chairman Weisz: You commented on that the information would have to be somewhat restricted on small groups, but I don't see anything in the language that would really restrict that. Is that going to be up to the insurer to determine the information? Who will determine this?

Rep. Kasper: The problem is on line 16 where we are dealing with the groups under 50. "A detailed claims experience report that outlines payments made on behalf of the health plan", may need to be eliminated an amended out. If in a smaller group you have a total number of insured and total premiums paid and total benefits paid in a period years, generally need to have three years of claims experience. That might be sufficient or you might do an amendment that says, "For groups of 25 or less" or whatever number the committee might consider. Some options there.

Rep. Devlin: Have same concerns you have Mr. Chairman. I'm trying to understand the request for upon receipt of request of an employer. To me that could be daily. Normally these things only happen yearly when your plan is up. You could have an employer asking you or whoever their carrier was everyday for this report and I would be concerned about that. Have you been turned down as you try to price somebody else a bid? My understanding was that insurance companies readily provide this information. I'm wondering if this is a bill looking for a problem or is there something I don't understand about your request.

Rep. Kasper: Currently law says the data must be provided for employers with 50 or more. Which means 50 or less you don't have to. I'm saying I believe the groups of 50 or less, we need to get some information and that is what this statute applies to. As far as your concern about you could request that information daily, you could, but employers don't like to deal with health insurance on a yearly basis, let alone a daily basis. I would certainly have no problem at all putting a limiter in there. Limit to once or twice per year on a request.

Rep. Porter: On other types of insurance, homeowners or auto plans, are those all claims history open so that they can be requested?

Rep. Kasper: I do not sell casualty property and casualty insurance so I'm not at all familiar how that works. I believe and can certainly stand to be corrected, but I believe that

there is an information bureau like there is a medical information bureau that collects claims data on the p and c side of things, as well as the medical side of things. Formally Rep. Wald could certainly enlighten the committee if you can find him. The commissioner of insurance could also give you that information. I do know if you are dropped from auto insurance, it is hard to get it from another carrier, so they have got to have some information some place.

Rep. Porter: With the HIPPA concerns that are inside of those smaller groups, should the information be available to the employer or the underwriters of the other insurance you are bidding?

Rep. Kasper: On a small group I have of my own, this has two employees in the group and I won't mention the insurance company's name, on the annual renewal, I'm given a report of how many premiums paid and how many claims paid out for that year. The employer has that available to them if they want it. No names just raw data. In some cases the insurance companies are already providing it to the employer and in some cases they aren't. You could again consider that that information would be given to the broker that the employer requests provide that employer's alternative quote.

Rep. Porter: Does that then make you a covered entity? And currently would you consider you to be a covered entity when you have that kind of information or could you just share it with the employer and tell them? At what point does the broker or underwriter become a covered entity so that the information can't be shared back to somebody else?

Rep. Kasper: I can't answer that question. Don't see anything in the bill here talking about covered entity. That might be something that the committee wishes to clarify.

Chairman Wiesz: In your example of the two employees, are there not concerns over HIPPA when you have that small a group? Is there not a concern over HIPPA or has anyone challenged that?

Rep. Kasper: Not to my knowledge. Look at the new federal health care bill that is going through and look at some of the areas that is going to be disclosed of each one of our personal information to governmental entities which is very frightening. Again, it may be something in an amendment to the bill that protects that identity of those employees. I have no objection to that.

Dan Ulmer: AVP of Government Relations for BC/BS of ND testified in opposition. (See Attached Testimony #1.)

Chairman Wiesz: Halfway through your testimony you mentioned the requirement that information be sent directly to another carrier seems to pose an increased legal risk of exposure protected health information. How are you doing it currently on the groups over 50?

Dan: It is pretty hard to expose who was ill in groups over 50, if you look at this, just (interrupted.)

Chairman Wiesz: You are not changing the way you are going to send the information?

Dan: No. If you are down to a 2 or 3 or 5 member group, you know who has been sick. The question is what is a covered entity? Would a broker be a covered entity? I don't have that answer.

Rep. Porter: Is 50 the right number? It would seem to me that going back to 30 or 25 would still be enough covered and hard to figure out who was ill. What would be the problem of changing that to allow some information inside those smaller groups?

Dan: I assumed we used 50 because in the ND small group laws is 2-50. That's the vast majority of our insured. The second issue would be administration. It would be illuminist compared to what we do now. Thirdly, think about the potential changes of PPACA. Experience rating is going to go. The biggest wrestling match they are going to have under PPACA are going to have to deal with the individual mandate. If they repeal the individual mandate, we will be broke in less than a year. Because the other pieces behind it are important to people, pre-existing conditions, experience rating.

Chairman Wiesz: What do you consider a high dollar amount?

Dan: The lowest one on the reports I gave you is $10,000.

Rep. Paur: I can't see where the reporting requirements are different for under 50 and over 50.

Chairman Wiesz: The original law says upon each calendar year any employer with 51 or more and they are the ones that can get the information from the carrier.

Rep. Paur: Is this information here in the subsection?

Chairman Wiesz: Right. If they are under 51 they are not entitled to it. The carrier does not have to present that information.

Rep. Paur: But, the law now says under 50 they get this information and it says over 50 the same. There is no distinction between the two.

Chairman Wiesz: That's right; everybody is eligible for the information under the proposed bill.

Rep. Paur: So the privacy issue would not be addressed in this bill.

Chairman Wiesz: That is part of the question we have to take a look at.

Dan: I think that Rep. Kasper alluded to subsection d.

Chairman Wiesz: Any further opposition. We will close the hearing on HB 1286.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1296
January 25, 2011
Job #13381

☐ Conference Committee

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz: Let's take up HB 1296. Let's look at the two sheets that were handed out by the Blues, the health utilization reports. (See handout #1.) The first one that shows a group count by enrollment size, that is showing the total numbers of groups not policy. That is not the number of people enrolled, that is the number of plans that they have in each category. In the 100 plus category there are 182 plans that the Blues have that counts for 4% of the total of all of their plans they do. As you can see in that small group size of 1-10 people they have 3,659. The other page gives you the total number of people that are insured. They also show the self funded which of course don't come under this at all. These are the number of people under the self funded plans on the right hand side. You won't see any under the 50-99 size because the risk is too great if you are going to have a self funded plan with only 10 people in it. Any questions on the handout?

Rep. Porter: In the discussion we had on this particular bill, it really came down to at what point would the information be able to be divided back out to figure out who was carrying the losses and who was carrying the coverage? Right now we are set at 51 individuals and that is where the information was asked to see how many groups are inside of the other number brackets and how many lives insured are inside of the other numbers. Looking at the information, we could easily go down to 25 and still fairly exclusive of being able to figure out who was who inside of the plan.

Chairman Weisz: One of the concerns when you get to the smaller group size you end up with cherry picking. If you look at that group and start picking the ones that have very low loss ratios and offering special rates to those, it then increases the cost to the carriers that are left with the other ones. That is part of the issue of what size do you lower the group before cherry picking is going to start to come in.

Rep. Porter: Is it easy math to do the number of groups as 331? In that same bracket it is 14,948 lives, but you would have to figure the maximum inside of a plan can't exceed 50 even though you did it simply, it would.

Chairman Weisz: The group size is averaging about 35. We don't know how many of them might be pushing more on the 49 and how many pushing closer to the 26. It's closer to 40 as most of those are in the upper range.

Rep. Porter: The small side of that is 26.

Chairman Weisz: We can amend it, send it out as is and if the committee feels they need more time, I can sit on this one yet.

Rep. Devlin: There were a couple of other issues with this bill and one of them was they could provide these reports upon the receipt of a request of an employer. That could almost be a daily thing. I don't think that was the intent of anybody. I didn't have a problem with twice a year or yearly, but a daily type scenario is not in the best interest of anyone. We talked with the sponsor and they agreed we could take out Section D of the bill.

Chairman Weisz: He did want language added, instead of requesting an employer or broker employer designee or a broker that the employer designates is what he said. The request wouldn't necessarily go to an employer. I talked to the Blues about that part. I think they have some issues with that.

Rep. Devlin: The other issue with this bill is that it is limited in scope.

Chairman Weisz: That is true.

Rep. Conklin: I move a Do Not Pass.

Rep. Schmidt: Second.

Vote: 13 y 0 n DO NOT PASS CARRIED.

Bill Carrier: Rep. Schmidt

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

HB 1296
January 31, 2011
Job #13720

☐ Conference Committee

Committee Clerk Signature Vicky Crabtree

Minutes:

Chairman Weisz: The bill sponsor requested that we bring this bill back and put on some amendments. I told them I'd ask the committee what their wishes were. This is the one with the health utilization report where they have to be available for over 50. We did have a discussion on smaller numbers. I didn't think the committee was all that interested in amending it, but this way the sponsor can't say we never gave it a look. If there is an interest and if not it will stay right where it is at and we will deal with it tomorrow.

Rep. Porter: Was that the only portion he was looking at, was the 51 down to a different number?

Chairman Weisz: His hope was to somehow salvage it. If the majority of this committee wants to look at offering an amendment to reduce that number to something less than 50 and if I don't hear anything from the committee here; then it stays and I will pass the word on that the committee was not willing to bring it back. Ok, I guess I got my answer on that one.

Date: 1-25-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1296

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Conklin Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	√		REP. CONKLIN	√	
VICE-CHAIR PIETSCH	√		REP. HOLMAN	√	
REP. ANDERSON	√		REP. KILICHOWSKI	√	
REP. DAMSCHEN	√				
REP. DEVLIN	√				
REP. HOFSTAD	√				
REP. LOUSER	√				
REP. PAUR	√				
REP. PORTER	√				
REP. SCHMIDT	√				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Schmidt

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

REPORT OF STANDING COMMITTEE

HB 1296: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1296 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1296

#1

Testimony on House Bill 1296

House Human Services Committee 1/17/11

Mr. Chairman and members of the House Human Service Committee I'm Dan Ulmer AVP of Government Relations for Blue Cross Blue Shield of North Dakota and we oppose this bill.

Back in 2001 we had a number of employers that were shopping for health insurance and came to us for a quote. Although it was common practice for us to give our employer members utilization reports when they requested them we found it quite difficult to get these reports from other companies. So we introduced and supported a bill that created 26.1-36.4-09.

The debate around this bill focused on the size of the group whose utilization numbers would be exposed and we, along with others decided that the statute should focus on groups of 50 or more because of the possibility of exposing an individual or their family's protected health information to the employer.

As well, to minimize the potential administrative burden on carriers we limited when these reports could be provided to once per year or upon termination of coverage. .

This bill removes the 50 plus requirement and thus increases the likelihood of exposing protected health information as a group of 2 or 3 could ask for the report and it would be pretty easy to spot the sick family. In addition, the requirement that the information be sent directly to another carrier seems to pose an increased legal risk of exposing protected health information.

These reports are used to give potential insurers an idea of what type of experience the previous carrier had with a particular group (see attached). Under the newly enacted Patient Protection and Affordable Care Act-PPACA) in 2014, once the exchanges are implemented, insurers will no longer be able to use experience as a rating factor. PPACA limits insurer rating factors to age-geography and smoking.

The hope is that excluding experience rating will limit insurer cherry picking where insurers will only insure groups with healthy experiences.

As the dominant carrier in North Dakota this bill would obviously increase our administrative burden and potentially increase the probability of us being cherry picked for the next three years as PPACA winds its way toward implementing exchanges. In 2014 these reports will become useless for groups under 100 but will continue to be a burden because carriers won't be able to rate on experience.

Therefore we oppose HB1296. We think the existing law works well because it allows employers to shop, it protects personal health information and the changes proposed in this bill will only complicate matters as we all continue to wrestle with implementing the recently passed federal health care reform laws

I have attached sample reports for your perusal and am willing to answer any questions.

Sample Report

Payment Comparison

Claims Paid 01/01/2008 - 12/31/2008

Paid Month	Average Contracts	Average Members	Institutional			Professional	Prescription Drug	Total Payments	Payment PMPM
			Inpatient Claims	Inpatient Days	Total Payments	Total Payments	Total Payments		
Jan-2008	964.5	1,979.0	12	48	$193,578	$103,053	$34,917	$331,549	$167.53
Feb-2008	1,021.5	2,091.0	8	17	$120,411	$133,559	$41,534	$295,504	$141.32
Mar-2008	1,111.0	2,284.5	7	15	$138,660	$128,485	$50,403	$317,547	$139.00
Apr-2008	1,203.0	2,473.0	19	70	$593,554	$202,924	$41,308	$837,785	$338.77
May-2008	1,247.0	2,554.0	12	19	$159,470	$122,832	$61,617	$343,920	$134.66
Jun-2008	1,374.0	2,808.0	26	104	$272,404	$177,143	$60,624	$510,171	$181.68
Jul-2008	1,427.0	2,912.0	8	22	$215,570	$212,122	$63,518	$491,211	$168.69
Aug-2008	1,498.0	3,054.0	21	76	$289,828	$168,243	$78,854	$536,924	$175.81
Sep-2008	1,539.5	3,132.0	19	71	$403,842	$237,822	$67,723	$709,387	$226.50
Oct-2008	1,651.5	3,368.5	14	110	$207,714	$188,209	$71,429	$467,352	$138.74
Nov-2008	1,754.0	3,597.0	22	31	$311,730	$271,651	$102,623	$686,004	$190.72
Dec-2008	1,831.0	3,769.5	26	81	$403,617	$299,557	$114,661	$817,836	$216.96
Totals	**1,385.1**	**2,835.2**	**194**	**664**	**$3,310,378**	**$2,245,601**	**$789,211**	**$6,345,191**	**$186.50**

** Negative amounts denote refund and supplemental activity during the month.*

Sample Report

Membership - Institutional by Year/Month

01/01/2008 - 12/31/2008

	Contracts					Members				
Month/Year	**Single**	**SPD**	**2-Party**	**Family**	**Total**	**Single**	**SPD**	**2-Party**	**Family**	**Total**
Jan-2008	526.0	95.5	35.0	308.0	964.5	526.0	257.0	70.0	1,126.0	1,979.0
Feb-2008	558.0	101.0	35.0	327.5	1,021.5	558.0	273.0	70.0	1,190.0	2,091.0
Mar-2008	604.5	113.0	37.0	356.5	1,111.0	604.5	305.0	74.0	1,301.0	2,284.5
Apr-2008	660.5	118.0	37.0	387.5	1,203.0	660.5	317.0	74.0	1,421.5	2,473.0
May-2008	694.0	119.0	37.0	397.0	1,247.0	694.0	320.0	74.0	1,466.0	2,554.0
Jun-2008	767.0	129.5	37.0	440.5	1,374.0	767.0	346.5	74.0	1,620.5	2,808.0
Jul-2008	800.0	133.5	36.0	457.5	1,427.0	800.0	356.0	72.0	1,684.0	2,912.0
Aug-2008	840.0	140.5	37.0	480.5	1,498.0	840.0	376.0	74.0	1,764.0	3,054.0
Sep-2008	853.5	150.5	39.0	496.5	1,539.5	853.5	401.5	78.0	1,799.0	3,132.0
Oct-2008	920.0	162.5	37.0	532.0	1,651.5	920.0	432.0	74.0	1,942.5	3,368.5
Nov-2008	968.5	175.5	35.0	575.0	1,754.0	968.5	464.0	70.0	2,094.5	3,597.0
Dec-2008	1,004.5	182.0	35.0	609.5	1,831.0	1,004.5	480.0	70.0	2,215.0	3,769.5
Total Members	**9,196.5**	**1,620.5**	**437.0**	**5,368.0**	**16,622.0**	**9,196.5**	**4,328.0**	**874.0**	**19,624.0**	**34,022.5**
Average Per Month	**766.3**	**135.0**	**36.4**	**447.3**	**1,385.1**	**766.3**	**360.6**	**72.8**	**1,635.3**	**2,835.2**

Sample Report

High Dollar Payments

Claims Paid 12/15/2008 - 12/31/2008

Member	High Dollar Payments
1	$17,850
2	$15,900
3	$12,485
4	$11,685
5	$11,192
6	$10,370
Totals	**$79,481**
Percentage of Total Payments	18.6%

*Plan** Average = 57.3%*

Accumulated IN, PR, and RX paid amounts which meet or exceed $10,000

*** Includes all BCBSND members (in state and out of state).*

#1

Dan Ulmer

[redacted]

Sent: Jim Sorensen
To: Monday, January 17, 2011 1:50 PM
Cc: Dan Ulmer; Rod St. Aubyn
Subject: Kevin Schoenborn
Group Count by enrollment size

Dan – Kevin forwarded your voice message on a request for a breakdown of our group counts by size. As you know, this count changes month-to-month but a recent snapshot taken in December had the following breakdown of our group accounts:

Group Count by Enrollment Size

Size	Group Count	% of Total
1 to 10	3,659	71
11 to 25	801	16
26 to 49	331	6
50 to 100	185	4
100+	182	4
Total	**5,158**	**100**

[redacted]e know if you need more info.

Jim Sorensen
Assistant Vice President,
Marketing Support

Office: 701-277-2485
Mobile: 701-361-8668
FAX: 701-282-1469

[redacted]

Members by Group Size and Line of Business

December 31, 2010

Size	Fully Insured	Self-Funded
1 - 9	17,493	0
10 - 24	14,948	0
25 - 49	14,948	0
50 - 99	13,282	6,458
100+	27,901	126,588
Associations[1]	24,648	8,644
NDPERS	58,285	0
	171,505	141,690

[1] All associations are 100+ in size.

Note: Totals exclude FEP, National Accounts and NBPA with NMIC Stop-Loss.