

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

INDUSTRY, BUSINESS, AND LABOR COMMITTEE

August 21, 2008

Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 8:30 a.m.

Members present: Representatives Rick Berg, Bill Amerman, Donald L. Clark, Mark A. Dosch, Jim Kasper, Darrell D. Nottestad, Gary Sukut, Elwood Thorpe, Don Vigesaa, Steve Zaiser; Senators Arthur H. Behm, Nicholas P. Hacker, Robert M. Horne, Jerry Klein, Terry M. Wanzek

Members absent: Representatives Tracy Boe and Glen Froseth

Others present: Representative Merle Boucher, member of the Legislative Council, also was present.

See [Appendix A](#) for additional persons present.

It was moved by Representative Nottestad, seconded by Senator Klein, and carried on a voice vote that the minutes of the July 9-10, 2008, meeting be approved as distributed.

WIRELESS SERVICE STUDY

Chairman Berg called on Mr. Todd D. Kranda, Verizon Wireless, for comments regarding the committee's study of the wireless industry in the state. Mr. Kranda said representatives of Verizon Wireless will provide the committee suggestions regarding expanding access to wireless service in the state. He said Mr. David Arme, Mr. Roderick Maddox, and Mr. Cary Degenstein from Verizon Wireless are present and may provide the committee with additional information.

Mr. Maddox distributed information ([Appendix B](#)) regarding the Verizon Wireless network in North Dakota. He said Verizon Wireless is continuing to build its network in this state and provide additional reliability. He said the network provides backup power at most cell sites. He said 98 percent of the sites have a fixed generator and the sites can run on a battery for up to six hours. He said the ability to continue providing service instills the reliability that is expected of wireless providers. He said Verizon Wireless has diversified facilities so that in the event of an emergency there will not be a single path back to a particular geographic area. He said Verizon Wireless also has the ability to provide temporary assets to address an emergency and can deploy temporary facilities to provide service, such as was done in the case of the tornado at Northwood. During the recent floods in Iowa, he said, Verizon Wireless kept 98 percent of its cell sites operational. He said Verizon Wireless has invested almost \$130 million in

North Dakota since 2000, and North Dakota is an example of a very welcoming environment to build the towers necessary for a reliable network. To continue that welcoming environment, he said, it is important to ensure that restrictive covenants and local ordinances do not restrict the building of towers. He said the next generation of technology will require modification of towers and Verizon Wireless will continue to improve capacity and extend coverage in the state. He said the average cell site takes approximately 24 months to complete.

In response to a question from Senator Hacker, Mr. Maddox said zoning issues have not been a problem in siting towers in North Dakota. He said continuing to ensure there are no hurdles will allow for improved capacity and coverage.

In response to a question from Representative Kasper, Mr. Maddox said Verizon Wireless has between 150 and 160 towers in the state and would need about 50 to 60 more sites to saturate coverage in the state. He said the additional towers are mostly needed due to challenges presented by the terrain. He said Verizon Wireless has attempted to improve technology in more populous areas and quickly provide that technology in the remainder of the country. He said the level of technology in this state is at the same level as in the larger markets.

Representative Berg said the state has looked to develop private and public partnerships to encourage investment in the state and to reduce risk. He said he challenges providers to provide wireless and broadband coverage in all areas of the state to make the state a shining example. He said the state can be partners with private businesses to reduce the risk of investment. He encouraged representatives of private industry to be bold in bringing ideas to the state.

Mr. Maddox said municipalities in other parts of the country have constructed towers and allowed wireless carriers to use the towers in conjunction with the municipal users. However, he said, the towers must be constructed to the standards that are needed by the wireless carriers.

Representative Zaiser said it is possible that Verizon Wireless could be more aggressive in the state because of the welcoming environment.

In response to a question from Senator Behm, Mr. Maddox said the merger of Verizon Wireless and Alltel will result in the divestiture of one network. He said coverage in the state will not change due to the

merger, but Verizon Wireless will continue building out coverage.

Representative Boucher said the quality of coverage in rural areas is tremendously different than urban areas. However, he said, rural customers are paying the same or more for service that is not equal.

Mr. Maddox said Verizon Wireless will be expanding coverage in rural areas.

Mr. Armev distributed written information ([Appendix C](#)) relating to deployment of communication networks through tax incentives. He said providing a sales tax exemption on equipment helps increase the pace of deployment of equipment. He said other states have provided income tax credits for investment in wireless networks. He said the state of Kansas used universal service funds to deploy broadband coverage. However, he said, that type of investment is not the best option.

Representative Berg said wireless and broadband coverage in the state have come a long way due to private sector competition. He said there are many programs in place to assist businesses that are growing the economy. He encouraged wireless providers to examine ways to use the existing state programs or proposed modifications of those programs to help expand coverage.

In response to a question from Senator Hacker, Mr. Maddox said Verizon Wireless provides broadband service wherever the company has wireless coverage.

In response to a question from Senator Horne, Mr. Maddox said Verizon Wireless has developed five new cell sites in northwest North Dakota and expects to add five more sites next year to meet the demand due to growth in energy development.

Representative Nottestad said it is important for wireless companies to look at improving coverage in limited-coverage areas.

Mr. Armev said he often tells people in communities that are seeking additional coverage to present to the company information making the case for expansion. He said Verizon Wireless works closely with the Public Service Commission to identify areas for expansion.

In response to a question from Senator Klein, Mr. Maddox said the merger with Alltel will not result in Verizon Wireless gaining the Alltel towers. He said Alltel properties will be part of the divestiture.

PHARMACY AND PHARMACIST REGULATION

State Board of Pharmacy and North Dakota Pharmaceutical Association

At the request of Chairman Berg, committee counsel reviewed a background memorandum entitled [Regulation and Licensing of Pharmacists and Pharmacies - Background Information](#).

Chairman Berg said the study required by 2007 House Bill No 1299 likely can be broken down into two issues. He said one issue is the relationship

between the State Board of Pharmacy and the North Dakota Pharmaceutical Association. The other issue, he said, relates to the pharmacy ownership requirements set forth in North Dakota Century Code Section 43-15-35.

Chairman Berg called on Mr. Arnold Thomas, North Dakota Healthcare Association, for comments relating to the State Board of Pharmacy and the relationship of the board with the North Dakota Pharmaceutical Association. Mr. Thomas submitted written testimony ([Appendix D](#)).

In response to a question from Representative Berg, Mr. Thomas said he is unaware of any other statutory provisions relating to medical professions which establish mandatory membership in a professional association. He said it is appropriate that the licensing board regulate the profession, but mandatory association membership is not necessary. He said hospital-based pharmacists have different interests than commercial pharmacists.

In response to a question from Senator Hacker, Mr. Thomas said there generally is no sole source for continuing education in most professions. He said continuing education requirements generally require the approval of the regulatory body.

In response to a question from Representative Zaiser, Mr. Thomas said the fees collected by the State Board of Pharmacy for licensure should be sufficient for regulation of the profession. He said a private association can set voluntary dues for individuals wishing to participate in the association. He said four main functions of an association are advocacy, communication, data collection, and education. He said members of an association generally come together with respect to a common interest, which is separate from the regulatory function of a licensing board.

Mr. Kim Christiansen submitted written testimony ([Appendix E](#)) relating to the relationship between the State Board of Pharmacy and the North Dakota Pharmaceutical Association and the pharmacy ownership restrictions.

In response to a question from Representative Kasper, Mr. Christiansen said there are an unlimited number of resources for continuing education opportunities. He said he obtains approximately 50 percent of his continuing education through the North Dakota Pharmaceutical Association. He said the pharmaceutical continuing education programs generally have a registration fee, except for one program funded by the State Board of Pharmacy.

In response to a question from Senator Klein, Mr. Christiansen said the statutory relationship between the board and the association has not been accepted well by all pharmacists. He said the association has had a sweetheart of a deal for a long time.

In response to a question from Representative Nottestad, Mr. Christiansen said pharmacist licensure fees in this state include membership in the

association. He said other states have voluntary associations and generally lower licensing fees.

In response to a question from Senator Hacker, Mr. Christiansen said the State Board of Pharmacy has often had one hospital pharmacist represented on the board.

In response to a question from Representative Vigesaa, Mr. Christiansen said he has not chosen to take advantage of the opt-out provision allowed by the board and the association. He said he has chosen to remain a member of the association and work within the association for change.

Mr. Brian Ament, North Dakota Society of Health System Pharmacists, said the society has about 340 voluntary members. He said the society supports requiring a minimum of one health system pharmacist on the State Board of Pharmacy. He said the board membership law could be amended to allow the society to provide one candidate to the board for selection for membership on the board. He said the society also supports adding one public member to the board.

In response to a question from Senator Klein, Mr. Ament said the membership in the association has been mandatory since 1989. He said no dues are required for membership in the society.

Ms. Joan Johnson said she is a hospital pharmacist and she questions why the state is telling her to which organization she should belong. She said membership in the association should be a personal decision and she should not be asked to pay an increased license fee so that the money can be channeled to the association when she disagrees with many stances of the association. She distributed written information relating to Medicaid prescription reimbursement and financial information of the board ([Appendix F](#)).

Mr. Howard C. Anderson, State Board of Pharmacy, submitted written testimony ([Appendix G](#)) regarding the committee's study of the State Board of Pharmacy and the regulation and licensing of pharmacists. He also submitted copies of the State Board of Pharmacy annual report for July 1, 2005, through June 30, 2007, and the rules and laws applicable to the practice of pharmacy. Copies of the information presented are on file in the Legislative Council office.

Mr. Anderson said hospitals are commercial entities and many hospital pharmacies are in direct competition with other pharmacists. He said the board's mission statement, which was developed when a hospital pharmacist was president of the board, focuses on patients and residents of the state and not on commercial interests. He said a large majority of the pharmacists in the state agree with the integration of the board and the association. He said the board and the association support a proposal by the board to include a pharmacy technician on the board. He said the board regularly has had members who are hospital pharmacists, and the association has worked hard to address the concerns of hospital

pharmacists. He said the board has approved of a policy under which the association may return \$100 of the license fee to any pharmacist who chooses to opt-out of participation in the association. However, he said, those members still may vote on association matters. Because of the small number of pharmacists in the state, he said, it is important to have everybody involved in developing rules and policy. He said most state pharmacy associations have approximately 40 percent to 50 percent of the licensed pharmacists as members. He said a significant amount of money is spent to recruit those members. He said the total licensing fee in this state likely is less or similar to license fees and association membership fees in other states. He said the members of the board like the current integration with the association. He said the integration is similar to the integrated system for attorneys.

In response to a question from Representative Berg, Mr. Anderson said the association and the board were integrated in 1989 in part due to financial issues experienced by the association, the desire to have every pharmacist in the state provide input on pharmacy issues, and to make things better for patients. He said the change was first proposed in 1987 and passed in 1989 and most pharmacists supported the change. He said the board recently has addressed concerns of pharmacists by allowing for the return of 50 percent of the license fee and proposing to change the composition of the board. He said approximately 40 percent to 60 percent of the pharmacists do not regularly take an active role in the association. However, he said, by paying one fee for licensure and for membership in the association, pharmacists become more active participants in the association. Over the last two years, he said, only 26 pharmacists have elected to utilize the opt-out provision.

In response to a question from Senator Hacker, Mr. Anderson said the board collects the \$200 license fee and makes quarterly transfers to the association. He said the information relating to the opt-out procedure is provided on the website of the association and the board and is included in the journal published by the association.

In response to a question from Senator Behm, Mr. Anderson said benefits of membership in the association include being a participant in the development of policy and having the opportunity to participate in continuing education developed by the board, the association, and the North Dakota State University College of Pharmacy. He said the cost for the continuing education classes is lower due to that cooperation. He said the most important consideration for the board and association is to provide excellence in patient care.

In response to a question from Representative Berg, Mr. Anderson said the board has a clear statement regarding conflicts of interest.

In response to a question from Senator Wanzek, Mr. Anderson said the board of directors of the

association made the decision to provide the opt-out procedure. He said state law allows the association to handle its money and the board believes that it is within the authority of the association to refund fees pursuant to the opt-out procedure. He said to change the procedure to an opt-in method would likely cost the association a significant amount of money.

Mr. Michael D. Schwab, North Dakota Pharmaceutical Association, submitted written testimony ([Appendix H](#)) relating to the committee's study of the State Board of Pharmacy and the regulation of pharmacists.

In response to a question from Representative Berg, Mr. Schwab said the association's budget is approximately \$200,000. He said some states that have voluntary association membership have membership rates as low as 15 percent and as high as 65 percent.

Pharmacy Ownership Restrictions

Mr. Thomas submitted written testimony ([Appendix I](#)) relating to pharmacy ownership restrictions.

In response to a question from Senator Hacker, Mr. Thomas said some hospital-owned commercial pharmacies were grandfathered in when the pharmacy ownership law was changed in 1963.

In response to a question from Representative Boucher, Mr. Thomas said remote telepharmacy sites should not be required to have a separate pharmacy license when the site has one supervisor.

Mr. Daniel M. Traynor, North Dakotans for Affordable Healthcare, submitted written testimony ([Appendix J](#)) regarding the pharmacy ownership restrictions.

In response to a question from Representative Kasper, Mr. Traynor said it is unfair that residents of North Dakota pay higher prescription drug costs because of the pharmacy ownership restrictions. He said a monopoly should not be sanctioned under state law.

Dr. David T. Flynn, North Dakotans for Affordable Healthcare, distributed a report ([Appendix K](#)) relating to the economic impact of the removal of pharmacy ownership restrictions in North Dakota.

In response to a question from Representative Kasper, Dr. Flynn said not all of the money spent at Wal-Mart for pharmacy purchases would return to the state. He said 25 percent of the prescriptions filled by Blue Cross Blue Shield are done out of state and 25 percent of those fills are done at Wal-Mart.

In response to a question from Representative Berg, Dr. Flynn said insurance companies would be projected to save \$21 million as a result of the lower cost of prescriptions if the pharmacy ownership restriction law were repealed. He said the savings would be the result of the reduction in the cost-share. He said the state would receive approximately \$1.8 million of increased sales in income tax revenue if the ownership restriction law were repealed. He said lower pharmaceutical prices would encourage

increased spending in other areas and pharmacies would benefit from the increase in available income.

In response to a question from Representative Zaiser, Dr. Flynn said retailers occasionally sell products at close to or below cost. He said if an item is more expensive at one retailer, the consumer has the option to buy elsewhere. He questioned why it is a problem to pay a lower price. He said consumers need to make choices of what to buy where based on a number of factors, including the price of gas. He said consumers are smart enough to make decisions regarding what is best for them.

Representative Zaiser said a small pharmacy may not benefit from the projected additional income available for consumers to spend because the pharmacy may not carry other items such as milk.

In response to a question from Senator Klein, Dr. Flynn said the conclusions in his report are based on the average cost of prescription fills. He said the average cost at Wal-Mart is \$52 and the current average cost in the state is \$77.

In response to a question from Representative Kasper, Dr. Flynn said if the average cost per fill were \$65, the total estimated benefit would be reduced significantly. He said the \$77 figure came from Blue Cross Blue Shield.

In response to a question from Representative Berg, Dr. Flynn said North Dakota pharmacists rank last in average annual income. He said North Dakota pharmacy technicians rank 19th nationally. He said there are always ways beyond price to compete in the marketplace. He said providing consulting and advisory services is a way that independent pharmacists can compete. He said independent pharmacists are not disappearing in other states.

In response to a question from Representative Vigesaa, Dr. Flynn said his report does not address travel expenses and the cost of the loss of jobs due to the closing of rural pharmacies. He said employment of pharmacists will not decrease. He said the report looks at the overall impact on the state. Because it may be a burden for the consumer to travel away from rural areas, he said, rural pharmacies likely will not close and residents likely will fill their prescriptions locally if there is not a nearby competitor.

Dr. Flynn said the report is a preliminary report and he will provide the committee with additional information when the data is collected.

Mr. Adam Jaffe, Walgreens, submitted written testimony ([Appendix L](#)) regarding the pharmacy ownership restrictions. In response to a question from Representative Kasper, Mr. Jaffe said two-thirds of Walgreens' sales are pharmacy sales.

In response to a question from Representative Berg, Mr. Jaffe said with the ownership restrictions, North Dakota will be the only state without a Walgreens pharmacy as of next year. He said a past chief executive officer of Walgreens was a graduate of the North Dakota State University College of Pharmacy.

In response to a question from Senator Hacker, Mr. Jaffe said the Walgreens business model is not structured to give 51 percent of store ownership to an onsite pharmacist. He said the ownership requirements are not feasible for Walgreens.

In response to a question from Senator Wanzek, Mr. Jaffe said the presence of Walgreens pharmacies nationwide has not caused independent pharmacists to go out of business.

In response to a question from Representative Sukut, Mr. Jaffe said Walgreens has purchased some independent pharmacies and worked with the independent pharmacists.

Mr. Robert J. Rogalski, Medcenter One Health System and the Health Policy Consortium, submitted written testimony ([Appendix M](#)) relating to the pharmacy ownership restrictions.

Mr. Anderson said the ownership restrictions are supported by the State Board of Pharmacy. He said the law is good for consumers and pharmacists. He said the Legislative Assembly in 2007 allowed rural hospitals to take over pharmacies in areas of need. However, he said, although there have been opportunities for hospitals to do so in McVille, Ashley, and Cando, the hospitals have not taken advantage of that opportunity. He said it is important that the State Board of Pharmacy have some control over all pharmacies. He said if a telepharmacy is used as a consultation site, the telepharmacy is required to be permitted as other pharmacies are required to be. Although pharmacist salaries in this state are generally lower than in other states, he said, salaries in this state are lower across the board. He said people often are willing to accept less to live here. He said there is less of a pharmacist shortage in this state than in other states. He said the ownership law ensures that a pharmacist is in charge of the pharmacy for the benefit of the patient. He said this system is better than the systems in other states and pharmacists in most of the other states would like to have a similar law.

In response to a question from Representative Berg, Mr. Anderson said the State Board of Pharmacy is concerned with access to pharmacies. He said changing the ownership law will result in some pharmacies closing. He said regulation of pharmacies owned by some publicly held corporations may be more difficult and it may be more of a challenge to deal with complaints from consumers. He said consumers also may have to deal with out-of-state attorneys if disputes arise. Under the current system, he said, the board calls pharmacists directly to deal with complaints.

Mr. Shane Wendel distributed written testimony ([Appendix N](#)).

In response to a question from Representative Kasper, Mr. Wendel said if a pharmacy is located outside the doors of a hospital, an independent pharmacist likely will lose the first fill of a prescription.

In response to a question from Representative Berg, Mr. Wendel said he loses some business to

mail-order pharmacies. If \$4 generic drugs are made available in the state, he said, Blue Cross Blue Shield likely will lower payments to independent pharmacies. If that happens, he said, his profit margin will decrease.

In response to a question from Representative Zaiser, Mr. Wendel said independent pharmacists are usually very engaged in a patient's health care decisions. He said a pharmacist has an obligation to look at less expensive options for the patient. He said the patient, doctor, and pharmacist must interact to find the best and least expensive care for a patient.

Ms. Beverley Adams, Health Policy Consortium, reviewed a PowerPoint presentation ([Appendix O](#)).

In response to a question from Representative Kasper, Ms. Adams said the State Board of Pharmacy has created an exception to the ownership law for a pharmacy in the event the owner pharmacist dies. She said the board has made the assumption that no one is interested in buying the pharmacy. In some cases, she said, a local hospital could purchase the pharmacy and continue to operate in the community.

Representative Kasper said the exception seems reasonable to allow more time to transfer the business without requiring the pharmacy to be closed upon the death of the pharmacist.

In response to a question from Representative Zaiser, Ms. Adams said it is important to look at the dynamics of each community when evaluating the impact of changing the ownership law. She said a clinic or a chain store could operate a pharmacy in a small town and access to pharmacies likely will not decrease. She said independent pharmacists need to be creative in finding other alternatives to increase profit margins.

Senator Behm said there are small pharmacies operating in other states. However, he said, he frequently has constituents ask him why they cannot buy prescription drugs at Wal-Mart.

In response to a question from Representative Kasper, Ms. Adams said if the basis of the ownership law is not patient care, why should a small group of pharmacists be provided economic protection by state law.

Ms. Susan M. Schnase, Health Policy Consortium, submitted written testimony ([Appendix P](#)) regarding the pharmacy ownership restrictions.

Mr. Larry L. Gauper submitted written testimony ([Appendix Q](#)) regarding the pharmacy ownership Restrictions.

In response to a question from Representative Kasper, Mr. Gauper said a Wal-Mart store in this state may have a pharmacy located within the store, but the pharmacy must be 51 percent owned by a pharmacist. Therefore, he said, it is not a Wal-Mart pharmacy. He said the law is absurd and needs to be changed. He said a pharmacist from another state with whom he recently visited said he expanded his pharmacy into other specialty areas to compete with chain store pharmacies. He said competition in the pharmacy business is needed.

Senator Behm said a pharmacist in his district indicated that 55 percent of his pharmacy income comes from prescriptions and the remainder is from other sources, such as greeting cards.

Mr. Ryan Horn, Wal-Mart, said Wal-Mart recently expanded the generic program to provide a \$9 generic program for tamoxifen, which is an important cancer drug for women. He said many people are unable to buy the drug and Wal-Mart is helping people meet the needs of consumers. He said the cost of prescription drugs is not being spread evenly and many people are working hard to fight for their lives and their health. He said 40 percent of Wal-Mart's customers live paycheck-to-paycheck and the generic drug program helps save people little bits of money that add up. He said people should not be forced to choose between purchasing the prescription drugs they need and food. Although the prescription drug business is only a tiny portion of Wal-Mart's business, he said, providing inexpensive generic drugs is a matter of principle. If the difference in pricing is so stark that people will drive 30 miles or 40 miles to save money on their prescriptions, he said, it is an issue that should be examined. He said people that need the savings are everywhere.

In response to a question from Representative Kasper, Mr. Horn said Wal-Mart could lease space to pharmacists that offer \$4 generic drugs, but Wal-Mart generally is not able to find pharmacists who are willing to do so. He said the free market is working in 49 other states and questioned why this state would subsidize one group.

In response to a question from Representative Nottestad, Mr. Horn said the \$4 generic drugs are offered by mail delivery, but not by mail-order.

Mr. Ed Christianson said he questions how a pharmacy can provide a prescription for \$4 if it costs \$200. He said he does not understand why his local pharmacist is not allowed to sell a prescription for 90 days, but he can get a 90-day prescription by mail-order. He said money is the main issue. He said the state is receiving a \$1 million settlement due to the New Jersey Attorney General suing a drug manufacturer. He said the money should be used to educate doctors and pharmacists about prescription drugs.

Mr. Ament said hospitals should be granted an exemption from ownership laws to provide a complementary service to other services provided by the health system.

Ms. Johnson said she sees a significant number of patients who do not have the means to pay for services and are not getting the medications they need because they cannot afford the medications. As a result, she said, their medical problems grow. She said many individuals are forced to choose between buying food and paying rent or purchasing the medications they need. Although there are programs that people may utilize to obtain assistance in getting the medications they need, she said, it is often difficult to deal with the paperwork and is overwhelming for

many of the patients. She said providing cheaper prescription drugs is a matter of social justice and medical ethics.

Representative Boucher said regardless of ownership issues, the focus must be on the consumer. He said the bottom line is that people are unable to afford their prescriptions and are not getting the access they need to prescription drugs.

Mr. Schwab said the ownership law in this state is unique in the United States, but is common in other countries such as Australia and New Zealand.

In response to a question from Representative Zaiser, Mr. Schwab said the association is not permitted to discuss pricing or pricing structures due to antitrust laws. Although a number of pharmacies provide pricing similar to the \$4 generics advertised by Wal-Mart, he said, the independent pharmacies do not advertise like Wal-Mart. He said pharmacists may need to promote themselves better and be more accountable if prices are not competitive.

In response to a question from Representative Kasper, Mr. Schwab said independent pharmacists often work with consumers to discuss prices and find alternatives for the consumer.

In response to a question from Representative Berg, Mr. Schwab said 90 percent of prescription drug sales are paid based upon what a third party determines the price to be.

Senator Wanzek said the challenge of independent pharmacies is not unique. Even if the ownership restriction is repealed, he said, he is hopeful that the services and special care provided by independent pharmacists will create a place for those independent pharmacists.

Mr. Schwab said he agrees, but national trends show that independent pharmacists are decreasing in number.

Mr. Tony Welder said he has been a pharmacist for 47 years and has owned his pharmacy for 41 years. He said he is licensed in three states and has chosen to practice in this state because he can control his business. He said independent pharmacists have stepped up to address patient needs by providing health screenings and other services. He said he has built a state-of-the-art compounding laboratory so that he can meet the special needs of his customers. He said there is too much focus on the \$4 generic drugs. He said the large drug chains, such as CVS and Walgreens, recently have paid large settlements for using outdated items and drug-switching. He said allowing the chain stores to own pharmacies will likely result in the sending of profits out of state. He said he knows of no pharmacist in the state who would not step up and provide a patient a drug that is needed by that patient.

Mr. Gary W. Boehler, Thrifty White Drug, said he has been a pharmacist for 38 years and a number of the drugs on the Wal-Mart \$4 generic list are drugs that have been available since he became a pharmacist. He said he counted 344 items on the

Wal-Mart list, only 95 of which are different chemical entities. He said the remainder are the same drug but vary by strength, container, or compound. He said the \$4 generic program is a marketing ploy. He said he can identify 20 items on the list for which he is unable to purchase for the same amount at which Wal-Mart sells that drug. He said the price or cost differentials for most of the items on the list are not very significant. He said the marketing ploy is creating a commodity out of a profession. He said the cost of a drug must include the price of dispensing the product.

Mr. Boehler said the Thrifty White Drug pharmacies in the state are 100 percent employee-owned. He said the money generated by the business in those stores stays in the state and is recycled many times in the communities in which the stores are located. He said 63 percent of the pharmacies are rural and provide a significant amount of support to nursing homes. He said the large chain stores have no interest in providing 24 hours a day 7 days a week support to a small town nursing home. Although the focus of the large chains will be on large cities, he said, rural pharmacies will be forced to close if the law were to change. He said the average pharmacy has gross revenues of \$1.5 million per year, 90 percent to 98 percent of which is pharmaceutical sales. He said there is very little else to make up the difference. Because the main business is a pharmacy, he said, pharmacists take their profession seriously. He said pharmacists provide afterhour calls to hospitals in rural communities, which is costly. However, he said, because there is no one else available, the pharmacists provide that service out of obligation to the community. If rural access to pharmacies is decreased, he said, the cost to consumers will increase because they will have to travel to larger cities to purchase prescription drugs.

In response to a question from Representative Berg, Mr. Boehler said the Thrifty White Drug pharmacies have majority ownership by the pharmacist and the remainder of the ownership is held by the other employees.

In response to a question from Representative Zaiser, Mr. Boehler said the chain stores and big hospitals have no intention of serving rural areas. He said the larger hospitals in the state are closing clinics in small towns. If a chain store pharmacy takes 15 percent of the business from a smaller pharmacy, he said, the profits of the small pharmacy will be reduced by 32 percent. He said that will result in the closure of that pharmacy. He said the operating model of Thrifty White Drug has been primarily accomplished through the acquisition of independent owners in rural areas who want to retire. He said the Thrifty White Drug stores replicate the manner in which an independent pharmacist operates. He said Thrifty White Drug requires its pharmacists to participate in the Medicare Part D program and other various training programs.

In response to a question from Senator Horne, Mr. Boehler said the repeal of the ownership

restrictions likely will force small independent pharmacies out of business. He said it is likely that 30 to 40 rural pharmacies would close.

In response to a question from Representative Berg, Mr. Boehler said it would be difficult for an independent pharmacist to compete with Wal-Mart because Wal-Mart uses the pharmacy as a loss leader.

In response to a question from Representative Kasper, Mr. Boehler said the \$4 generic programs are cash purchases and do not involve insurance payments.

In response to a question from Representative Zaiser, Mr. Boehler said he is not in favor of changing the ownership restrictions. He said the large hospitals are not interested in serving rural areas and the large chain stores like Wal-Mart can attract customers with the \$4 prescriptions and get the other business that may have been done in the small towns.

In response to a question from Representative Thorpe, Mr. Boehler said sometimes consumers are willing to deal with a lack of service in exchange for cheaper prices. He said the \$4 generic pricing is a predatory business practice. He said Dr. Flynn's study did not take into account the cost of providing services and was based on unrealistic assumptions. He said the cost of businesses closing in rural areas was not addressed in Dr. Flynn's study.

Chairman Berg requested Mr. Anderson to provide the committee with additional information regarding the location of pharmacies in the state and the number of employees at those pharmacies. He said he would also like to see information relating to trends with respect to the number of pharmacies in the state. He requested Mr. Anderson to provide the committee with information regarding disciplinary actions taken by the board, and if possible, to address whether there is any difference in the number of disciplinary cases between the independent pharmacists and the chain pharmacies operating in the state.

Mr. Mark J. Hardy submitted written testimony ([Appendix R](#)) regarding pharmacy ownership restrictions.

In response to a question from Representative Berg, Mr. Hardy said a large pharmacy that fills hundreds of prescriptions a day takes time away from patient interaction. He said he is able to work closely with doctors, providers, and consumers.

Mr. Harvey Hanel, Workforce Safety and Insurance (WSI), said he deals with all types of pharmacies as the pharmacy director for WSI. He said he has found that it may be more difficult to obtain services for injured workers when only large chain pharmacies are available. He said there is generally a higher level of bureaucracy involved in dealing with chain stores. When dealing with independent pharmacies, he said, there is a different level of accountability, and it is generally easy to work with the independent pharmacists. He said WSI has been unable to secure a contract with Wal-Mart or Walgreens. He said the \$4 generic drugs generally

benefit only a specific group and provide little benefit for a third-party payer like WSI.

Mr. David Olig, Pharmacy Service, Inc., said the practice of pharmacy in this state is unique. He said pharmacists working for chain stores, such as CVS, generally do not participate in programs such as the medication therapy management program. He said participation in that program was 97 percent in North Dakota, which was the top rate in the nation for 2007. He said the practice of pharmacy is a professional practice not a commodity. In this state, he said, pharmacists operate the pharmacy and hold the profession in high esteem. He said corporate attitudes focus on the generation of traffic and profit rather than service. He said there has been a progressive collaboration among the North Dakota State University College of Pharmacy, the State Board of Pharmacy, and the North Dakota Pharmaceutical Association. He said the \$4 generic program is a marketing ploy to bring people into Wal-Mart and lowers the quality of health care in the state, as well as destroying the marketplace.

In response to a question from Representative Zaiser, Mr. Olig said pharmacists do not want to give up control of their practice. He said North Dakota is unique and he is unsure if ownership issues have been raised in other states.

Mr. Bob Treitline said he has operated a pharmacy in Dickinson since 1983. He said Osco Drug owned 49 percent of the pharmacy and he owned 51 percent. He said the ownership restriction law works well and protects the decisionmaking of pharmacists. He said he has had five different minority owners and two have said that pharmacy practice should be the same in all pharmacies as it is in this state. He said he provides health screenings and returns resources to the community.

Mr. Daniel M. Churchill submitted written testimony ([Appendix S](#)) regarding the pharmacy ownership restrictions.

In response to a question from Representative Kasper, Mr. Churchill said the \$77 average prescription cost cited by Dr. Flynn is inaccurate. He said North Dakota has lower average prices than other states per prescription. He said 90 percent of all fills at pharmacies are based on third-party formulas and the belief that chain stores have lower prices is not entirely correct. He said this state has active pharmacists who work with consumers to manage the cost to the consumers. He said the drugs listed on Wal-Mart's generic list also are cheap at independent pharmacies. Because independent pharmacists provide a higher level of service, he said, pharmacists in this state reduce costs in the health care system.

In response to a question from Representative Zaiser, Mr. Churchill said if a hospital wants to provide a continuity of services for its patients, the hospital has the ability to establish an ownership relationship with a pharmacist.

Mr. Keith Horner, St. Alexius Medical Center, submitted written testimony ([Appendix T](#)).

Mr. Schwab distributed a statement ([Appendix U](#)) from the National Community Pharmacists Association and a copy of correspondence from Mr. Pete N. Antonson, Ms. Sharon Ericson, Mr. Wade Bilden, and Mr. Paul Bilden ([Appendix V](#)).

WORKFORCE SAFETY AND INSURANCE REVIEW

Mr. Bruce Furness, Interim Executive Director and CEO, WSI, said representatives of WSI will provide the committee with additional information requested by members of the committee at the last meeting.

Ms. Jodi Bjornson, WSI, submitted written summary ([Appendix W](#)) regarding WSI litigation from 2003 through 2008.

In response to a question from Representative Berg, Ms. Bjornson said some hearings that are requested may not be held because the claimant withdraws the request, a settlement is entered, or WSI reverses a decision.

In response to a question from Senator Hacker, Ms. Bjornson said WSI will appeal a case to the North Dakota Supreme Court if it appears a decision will have a substantial impact on a legal question or clarification of a legal issue is needed.

Representative Berg said the perception that WSI rejects a substantial number of administrative law judge decisions is incorrect.

Representative Zaiser said he spoke with two people in the last two months who were so frustrated with WSI that they quit pursuing their claims. He said there are people who are afraid to comment regarding their claims because they believe that WSI will retaliate and take away other benefits.

Ms. Bjornson submitted a summary ([Appendix X](#)) of the payment of attorney's fees by WSI.

In response to a question from Representative Berg, Ms. Bjornson said the hourly rate for claimants' attorneys will increase to \$130. She said WSI will reimburse a claimant for a preorder consultation with an attorney.

In response to a question from Representative Boucher, Ms. Bjornson said the costs that are paid for attorneys are itemized in administrative rules. She said a claimant must prevail in an appeal to receive attorney's fees beyond the preorder consultation fees.

Representative Boucher questioned whether the costs for WSI counsel were higher in the areas in which information was not provided.

Ms. Bjornson said the information that was not included had not been calculated due to the amount of information that was requested and the lack of time to compile the information.

Representative Berg said additional clarification regarding the payment of attorney's fees is needed. He said the perception that no attorney's fees are being paid is incorrect. He said the cost of attorney's fees was significantly higher before the law was changed to eliminate the payment of a flat amount for claimants' attorneys. He requested Ms. Bjornson to

provide additional information at the next meeting of the committee regarding the payment of attorney's fees by WSI.

Mr. Tim Wahlin, WSI, submitted written information ([Appendix Y](#)) relating to independent medical examinations.

In response to a question from Representative Berg, Mr. Wahlin said a number of independent medical examinations are conducted in Moorhead, East Grand Forks, and Dilworth, Minnesota, because of the availability of health care facilities in which to conduct the examinations.

In response to a question from Representative Boucher, Mr. Wahlin said WSI attempts to bring the physician as close as possible to the injured worker in an appropriate medical facility. He said WSI looks at expediency, and it is often easier to find a facility in Moorhead or Dilworth than it is in Fargo.

Representative Berg said he is aware that there are a couple of vacant clinics in Moorhead. However, he said, it may be beneficial for WSI to schedule the independent medical examinations in a health care facility in this state to address public perception concerns. He said an independent medical examination done out of state has less credibility, especially if the examination is held in a makeshift facility.

In response to a question from Representative Amerman, Mr. Wahlin said the 193 independent medical examinations noted on the documents he distributed are physical examinations not record reviews. He said WSI is attempting to find more accurate data with respect to the number of records reviews.

In response to a question from Senator Klein, Mr. Wahlin said the vast majority of independent medical examinations are conducted by physicians from outside this state due to the fact that WSI is unable to find North Dakota physicians willing to review the work of other physicians. In addition, he said, it is often difficult to find a physician with the specialty needed.

In response to a question from Representative Boucher, Mr. Wahlin said North Dakota law allows a review by physicians from outside the state. He said he is unsure if all of the physicians conducting independent medical examinations are licensed in North Dakota.

Representative Dosch requested representatives of WSI to attempt to provide additional information regarding the number of independent medical examinations conducted in other states for workers' compensation purposes.

In response to a question from Representative Amerman, Mr. Wahlin said independent medical examinations may be requested for a number of reasons. If WSI sees something in a claim indicating that treatments are not aiding the injured worker, he said, WSI may request an independent medical examination. In addition, he said, an independent medical examination may be requested if WSI is not

receiving adequate information from the treating physician or something in the file does not seem right.

Mr. Furness said the three biggest issues that have been faced by WSI relate to the Office of Independent Review, independent medical examinations, and the use of independent hearing officers. He said the Workers' Compensation Review Committee is considering changing the name of the Office of Independent Review. However, he said, a name change does not really solve the problem. He said WSI has been attempting to work with healthcare providers in this state to develop agreements for independent medical examinations. However, he said, it has been very difficult to enter any agreements. He said WSI has come to an agreement with the Office of Administrative Hearings to have that office conduct hearings for WSI. He said most workers' compensation claims are handled very quickly and are noncontroversial.

Representative Berg said more than a name change is needed to address issues relating to the Office of Independent Review. He said the office should be more independent, but accountability is needed. However, he said, the statistics provided by WSI indicate that the decisions on claims that go through the Office of Independent Review and which are subsequently appealed appear to be consistent.

In response to a question from Representative Boucher, Mr. Furness said North Dakota physicians are not willing to pass judgment against each other. He said WSI continues to look for a solution to the concerns expressed regarding independent medical examinations.

Representative Zaiser said the committee heard information at a prior meeting relating to privatization. He said it would be appropriate to invite representatives of states with a monopolistic state workers' compensation fund to address the committee.

Chairman Berg said there are only three other monopolistic funds. He said he does not see the value in inviting someone from those state funds to address the committee if they are not able to provide the committee with information that the committee can use.

Chairman Berg requested members of the committee to summarize their visits with the workers' compensation claimants with whom they were assigned to correspond.

Representative Amerman said he spoke with the injured worker assigned to him. He said the system creates an uneven playing field because the claimant does not have the legal knowledge to contest his claim. He said the claimant was investigated for fraud and WSI determined that the claimant did not report earnings. He said the claimant signed a stipulation agreeing that WSI would not recoup the payments, but would not pay for future injuries until the money was paid back to WSI. He said the claimant had memory loss and did not have medical reports until after he signed the stipulation. He said the claimant

would not have signed the stipulation if he had all of his medical records before he signed.

Representative Dosch said the claimant with whom he visited had several claims going back to 2003. He said the claimant is upset with his treating physicians and the medical institutions and felt that further complications of his condition could have been prevented with better medical care. He said the claimant is convinced that the treating physicians are hired by WSI. He said the claimant also is frustrated with the lack of communication with WSI and having to work through an attorney. He said more direct communication from WSI may help address the claimant's concerns and more aggressive treatment may have been beneficial. Because the claimant's attorneys are encouraging the claimant to sue the medical providers, he said, physicians appear to have been discouraged from helping him.

Representative Zaiser said he has spoken with that claimant and the claimant is frustrated that WSI is able to interfere with his relationship with his physician.

Senator Horne said the claimant with whom he visited was injured in February 2004. He said the claimant was offered a transitional job by his employer and received temporary disability benefits. He said the claimant attempted to return to this job after he was certified as being able to go back to work.

However, he said, the work resulted in an improper healing of the claimant's injuries. He said the claimant's employer released him from work because the claimant was unable to do his job. He said the claimant has a poor perception of CorVel Corporation and felt that representatives of CorVel produced the results that WSI wanted. He said the claimant did not request a hearing because he believed that nothing would be changed. He said the claimant is now working at a lower-paying job and has not fully recovered from the injury. He said WSI needs to be more concerned about the injured worker and less concerned with money.

Representative Thorpe submitted a written summary ([Appendix Z](#)) of his visit with the claimant assigned to him.

Chairman Berg said the committee will continue to review the visits with injured workers at the next meeting of the committee.

There being no further business, Chairman Berg adjourned the meeting at 5:30 p.m.

John Bjornson
Committee Counsel

ATTACH:26