

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1264

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1264

Industry, Business and Labor

Conference Committee

Hearing Date Jan. 20, 1999

Tape Number	Side A	Side B	Meter #
2		x	39.3
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

HB 1264 Relating to worker's compensation independent medical examinations.

Chairman Berg opened the hearing on the bill.

Representative Pam Gullickson, introduced and testified in support of the bill. The bill allows for a simple easy way for workers to have independent medical examinations. She offered some amendments to the bill and explained why they were offered.

Mr. Dave Kemnitz, ND President AFL-CIO, testified in support of the bill. Questions and discussion followed.

Mr. Steve Latham, ND Trial Lawyers Association, testified in support of the bill. Many times examiners come from outside the area such as Minneapolis, Minn. They receive a higher

compensation than average examination work. If employees want to video tape the examination process, they should have that right. The bureau may request this examination for various reasons.

Mr. Seabald Vetter, Vice President of CARE (Concerned Aggregate Rights for Employees) testified in support of the bill. They represent employees and have approximately 200 members. The reason for the bill is that they want to eliminate out-of-state doctors. He and his group believe the doctors should be licensed in ND.

Mr. David Olson, self, testified in support to the bill with his past experience of a back injury. He had surgery and the surgery failed. This required the taking of pain therapy. The doctors that are brought in are considered "hired guns". On Mr. Olson's injury, certain specialists indicated that he should not have training for new employment. Workers Compensation wanted him to take the training so he can become re-employable again. A total of three examinations of Mr. Olson's condition were performed and he believes a local doctor could do the examinations.

Ms. Julie Leer, Attorney for groups, testified as neutral on the bill. She spoke about conflicting results of examinations on injured workers. IME's can't always be performed by in state doctors because of doctor availability. Sometimes a specialty need exists and only out of state doctors could perform the examination. Questions and discussion followed.

Mr. Mike Tomasco, Prime Care Health Group, testified in opposition to the bill. They serve as a host sight group and have access to needed equipment. His group questions the availability of qualified doctors in state to make examinations at times, however. On videos, the results as well as the tape, ends up in possession of people who can negatively affect the examination result.

Doctors don't want to put their reputation at stake with videos because different opinions from examinations can be made.

Dr. Matt Layman, President of the ND Medical Association, testified in opposition to the bill.

(see attached written testimony)

Tim Lockerith, Administrator of the Bone and Joint Center, Bismarck, ND, testified in opposition to the bill. This bill creates an adversarial position that the center does not want to become involved with.

Mr. Chuck Peterson, Board of Directors of the Bureau, testified in opposition to the bill. This bill would limit the selection of medical staff.

Chairman Berg closed the hearing on the bill.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1264

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-26-99

Tape Number	Side A	Side B	Meter #
3	x		0
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

HB 1264 Relating to worker's compensation independent medical examinations.

Chairman Berg opened the meeting on the bill.

Committee members discussed and answered questions on the bill.

Representative Glassheim moved to adopt amendment, Second by Representative Stefonowicz

By roll vote, 7 yes, 7 no, motion failed

Representative Koppang moved do not pass for bill, Second by Representative Keiser

By roll vote, 11 yes, 3 no, 1 absent, motion passed

Representative Keiser will carry the bill.

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1264.1

Hearing Date 1-26-99

Chairman Berg closed the meeting on the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1264 Amendment to: _____

Requested by Legislative Council Date of Request: 1-13-99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

- 2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____
- b. For the 1999-2001 biennium: _____
- c. For the 2001-03 biennium: _____

- 4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Date Prepared: 01-18-99

Department Workers Compensation Bureau

Phone Number 328-3856

***NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION***

BILL DESCRIPTION: - Independent Medical Examination

BILL NO: HB 1264

SUMMARY OF ACTUARIAL INFORMATION: The Workers Compensation Bureau, with the assistance of its Actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires the Bureau to notify an injured worker that the injured worker may have a doctor designated by the injured worker present at an independent medical examination. The proposed bill would also require the Bureau to notify an injured worker that the injured worker may also have a companion present at the independent medical examination and be allowed to make an audiotape and a videotape of the examination.

FISCAL IMPACT: Not quantifiable. It is anticipated the proposed legislation would result in claims adjudication delays ultimately increasing the costs associated with delays in return to work.

DATE: 1-17-99

PROPOSED AMENDMENTS TO HOUSE BILL NO. ~~2164~~¹²

Page 1, line 7, after "qualified" insert "North Dakota licensed"

Page 1, line 9, after "fees" insert "and must be within two hundred miles [321.87 kilometers] of
the employee's residence"

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1264

Page 1, line 10, after "a" insert "companion or"

Page 1, remove lines 12 and 13

Page 1, line 14, remove "and a videotape of the examination."

Renumber accordingly

Date: 1-26-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1264

House Industry, Business and Labor Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe		
Vice Chairman Kempenich	/				
Rep. Brekke		/			
Rep. Ekstrom	/				
Rep. Froseth		/			
Rep. Glassheim	/				
Rep. Johnson		/			
Rep. Keiser	/				
Rep. Klein		/			
Rep. Koppang		/			
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson		/			
Rep. Stefonowicz	/				

Total (Yes) 8 No 7

Absent _____

Floor Assignment _____

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

Date: 1 - 99
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1264

House Industry, Business and Labor Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass

Motion Made By Kempenich Seconded By Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe		
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom		/			
Rep. Froseth	/				
Rep. Glassheim		/			
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz		/			

Total (Yes) 11 No 3

Absent 1

Floor Assignment Keiser

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

REPORT OF STANDING COMMITTEE (410)
January 27, 1999 8:37 a.m.

Module No: HR-17-1251
Carrier: Keiser
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1264: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1264 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

HB 1264

INDEPENDENT MEDICAL EXAMINATIONS

Testimony

Before the House Industry, Business, and Labor Committee

January 20, 1999

Julie Leer, Attorney
North Dakota Workers Compensation Bureau

Mr. Chairman, Members of the Committee:

My name is Julie Leer and I am an attorney for the Workers Compensation Bureau. I am here to present the Bureau's concerns with 1999 House Bill No. 1264.

The Bureau uses independent medical examinations (IMEs) for many reasons. Among the most prevalent are:

- 1) To determine causation. This typically occurs when the Bureau receives conflicting medical opinions on the cause of an injury, specifically on whether the injury was caused by a worker's job. By law, the Bureau can only pay benefits for injuries caused by work.
- 2) To obtain a diagnosis. This may occur when the doctor or doctors who have been treating a worker for a work injury are unable to provide a definitive diagnosis for the worker's injury or condition.
- 3) To determine a course of treatment. This would occur in a situation where an injured worker fails to improve as typically would be expected for the type of injury suffered and the treating doctor is unable, or in some cases unwilling, to identify a more effective course of treatment for the worker.

There are very few doctors in North Dakota who are willing to perform IMEs. More importantly, perhaps, is that orthopedic specialists in North Dakota generally are unwilling to perform IMEs. Most of the workplace injuries experienced in North Dakota which result in wage loss are orthopedic injuries. Most of the relatively small number of doctors who perform IMEs in North Dakota specialize in physical medicine or occupational medicine rather than orthopedics.

The concern the Bureau has with this bill is that even fewer doctors will be willing to perform IMEs under these conditions. I contacted 4 doctors, three of whom asked that I not identify them. Of the three unidentified doctors, all have done independent medical examinations at some time during their practice, but only one had done IMEs at the request of the Bureau. Two of these doctors, including the one who has done workers' compensation examinations, said they would refuse to perform an IME if the patient

used a tape recorder or a video camera to record the IME. All three believed that the presence of these devices would create an adversarial atmosphere for the examination. One questioned whether the use of the device or the presence of a third party would potentially abrogate the doctor – patient privilege.

The doctor who consented to allow me to share his thoughts with you is Dr. Greg Peterson. Dr. Peterson is a local physiatrist who has performed IMEs for the Bureau. He said when he was practicing at Mayo Clinic, they had a policy which required the examining doctor to meet with the patient alone, at least for the initial visit. He said this allowed the doctor and the patient to discuss the patient's agenda; i.e., discuss the patient's physical symptoms and concerns about diagnosis and treatment. He said that allowing a third person to be present in the room frequently leads to the doctor receiving more input from the third person than from the patient. He said that, in his experience, the "companion" who is present at an examination is often a more assertive person whose presence can be intimidating and can hinder open communications between the doctor and the patient. He would rather get the patient's impression than the impressions of the "companion".

Dr. Peterson's opinion on the use of recording equipment is that it would make interaction a bit more uncomfortable and stilted. Dr. Peterson said he would also be concerned about an attorney picking apart his examination word by word and not relying on the report he issued which would contain the summary of his examination along with his findings and impressions.

The law currently allows an injured worker to have a doctor of the worker's choice accompany a worker to an IME. Our reimbursement statutes and rules also allow us to pay for a traveling companion for an injured worker who has to travel to attend an appointment only if the doctor verifies that the injured worker requires assistance in traveling. We are reluctant to have to tell a doctor conducting an IME that he must submit to having a third party present during the exam and to being recorded during the exam, because we are concerned that many or most doctors will flatly refuse to provide IMEs and we cannot afford to NOT be able to find doctors who will perform them. At a minimum, it is likely we would have to schedule virtually all IMEs outside the state, as we probably would be left with even fewer North Dakota doctors willing to perform the evaluations. At worst, we may have many cases in which we will simply be unable to obtain the medical information we need to make knowledgeable decisions on claims.

Thank you for your consideration. I'll try to answer any questions you may have at this time.

Testimony in Opposition to House Bill No. 1264
Workers Compensation Independent Medical Examinations

House Bill No. 1264 would allow an employee/patient in an independent medical examination under the workers compensation law to have a companion present at the examination and to make an audiotape and videotape of the examination. The bill does not indicate for what purposes the employee/patient would use the audiotape and videotape nor does it describe any protocols relating to the role of a companion in the examination room.

While an employee/patient might perceive the independent medical examination as an adversarial situation, physicians recognize that the health and well being of patients depends on a collaborative effort between physician and patient. This bill would frustrate the patient-physician relationship and defeat the purpose of the independent medical examination.

The use of audiotape and videotape in the physician's office is unprecedented in our state and would negatively impact the fairness and independence of the medical examination. Not only would physicians be discouraged from performing independent medical examinations, human nature and liability concerns suggest that both the employee/patient and the physician might also "act" for the camera or tape in the review process. The presence of recording equipment would hamper communication between the physician and patient, creating an atmosphere of suspicion and mistrust.

During an examination, a physician would likely be concerned about the potential use of an audiotape or videotape to later mischaracterize the physician's work for some other purpose. Physicians may be intimidated by the potential use or interpretation of the videotape or audiotape to accuse the physician of wrongdoing or inappropriate care in some other proceeding or public forum.

In addition, the bill provides no parameters with regard to the presence of the companion, which could create additional problems in the daily running of a clinic or other facility, with regard to issues of staffing and even workplace safety.

There are less intrusive ways of providing reassurance to an employee/patient. The law presently allows an employee/patient to have another doctor present at the examination at the employee's cost. The presence of another health care professional – a professional held to standards for safeguarding patient privacy and confidentiality – would not preclude an informative discussion between the employee/patient and the reviewing physician and would affirm the formal nature of the examination.

For these reasons, the North Dakota Medical Association opposes HB 1264.

HOUSE BILL 1264

Chairman

House Bill No. 1264 would allow an employee/patient in an independent medical examination under the workers compensation law to have a companion present at the examination and to make an audiotape and videotape of the examination. The bill does not indicate for what purposes the employee/patient would use the audiotape and videotape nor does it describe any protocols relating to the role of a companion in the examination room.

The North Dakota Medical Association opposes House Bill No 1264 for the following reasons:

While an employee/patient might perceive the independent medical examination as an adversarial situation, physicians recognize that the health and well being of patients depends on a collaborative effort between physician and patient. This bill would hamper the communications between the physician and the patient being evaluated. On one hand the patient may feel more inhibited about revealing personal and medically important information. On the other hand the physician may be inhibited in asking for this information.

The physical exam may be hampered because examination of intimate parts of the body, while clinically important, may be deferred in the presence of a video camera causing an incomplete examination and an disservice to the patient.

There may be problems in the logistics of the exam with a need for increased room size and other

accommodations for people video taping this exam. Exams using video taping would invariably be more time consuming and subsequently cost more money.

Physicians would be very concerned about what would happen to the video tape and fear of possible litigious actions would drive physicians away from performing these exams. This would decrease the number of qualified physicians to perform these exams again causing a disservice to the patient, and hindering Workers Compensation in providing these services to the to patient.

There are less intrusive ways of providing reassurance to an employee/patient. The law presently allows an employee/patient to have another doctor present at the examination. The presence of another health care professional-a professional held to standards for safeguarding patient privacy and confidentiality-would not preclude an informative discussion between the employee/patient and the reviewing physician and would affirm the formal nature of the examination.

For these reasons, the North Dakota Medical Association opposes HB 1264.