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ROLL NUMBER

DESCRIPTION

2283

2005 SENATE HUMAN SERVICES

SB 2283

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2283

Senate Human Services Committee

❑ Conference Committee

Hearing Date January 26, 2005

Tape Number	Side A	Side B	Meter #
1	x		4850-4870
Committee Clerk Signature			

Minutes:

Chairman Lee opened the public hearing on SB 2283. All members were present.

Chairman Lee was the main sponsor of this bill and introduced it. The bill is relating to hospital ownership of a pharmacy.

Testimony in favor of SB 2283

Chairman Lee: I brought this bill forward as the request of the Health Care Association because there have been some concerns that really lead to maintaining access to pharmaceutical services throughout the state.

Arnold R. Thomas, President of the North Dakota Healthcare Association.

See written testimony (Attachment 1) Proposed amendment (Attachment 2)

Sen. Dever: Are there any communities in the state now that have a hospital but do not also have a pharmacy?

Thomas: No, all hospitals have pharmacy services. The issue is whether they're limited to providing pharmacy services for hospital patients only or whether they may also be commercially licensed and offer services to a broader population.

Jerry E. Jurena, Chairman of the North Dakota Healthcare Association

See written testimony (Attachment 3)

James Cooper, President/CEO of Medcenter One Health Systems

See written testimony (Attachment 4)

Susan Bosak, Executive Administrator for the Health Policy Consortium.

See written testimony (Attachment 5)

Les Wietstock, Administrator, Town and County Medical Center, Cando, North Dakota.

Wiestock: I'm here representing a county that has lost 21% of its population between 1900 and 2000. In rural North Dakota, the three most important businesses on Main Street are the grocery store, the hardware store and the pharmacy, and not in that order. As we look at the shrinking population base in the rural areas, we need to be doing what we can to maintain those three businesses. In order to do that, we need flexibility. Probably the only enterprises that could have the capital available, to either acquire or operate a pharmacy, would be a medical provider. So what we're asking for today, is to give us the flexibility in the rural communities to allow the citizens in those areas access to a complete range of medical services.

Sen. Dever: Do you have a pharmacy in you community? Do you see hospitals opening up in competition with the pharmacies?

Wiestock: We had two until about a year ago. One went up for sale but no one was interested. Our local pharmacist told me that at this time he couldn't support SB 2283 but in seven to 10 years, when he's ready to retire, the bill would make sense. At least he was honest.

No further testimony in favor of the bill. No neutral testimony.

Testimony in opposition to SB 2283

Howard C. Anderson, Jr., Executive Director of the North Dakota State Board of Pharmacy.

See written testimony (Attachment 6)

Sen. Brown: Has the board ever made exceptions to the requirements?

Anderson: The rules are written so that exceptions can be made, however, no changes can be made to legislative issues.

Mr. Anderson talked about the MeritCare issue in Fargo. (Tape 1 side B meter # 1400-1660)

Sen. Brown: You gave a long answer and I'm not sure you answered it. Have you made any exceptions to the ownership requiremenets?

Anderson: No exceptions, because that's your law.

Sen. Brown: So there's been no exceptions to the law.

Anderson: We have grandfathered pharmacies since have been there in 1963, but when they lose their permit, the law says that can't have one anymore, and that's happened a few times.

Chairman Lee: Much of your testimony relates to the health and safety of the citizens, but how do we *hurt* the citizens by allowing hospitals to have a pharmacy?

Anderson: I think our pharmacists provide excellent care. This is not any impugning of any hospital pharmacist, I never intended to do that. Keep in mind, that the ownership law was

originally intended to keep the pharmacist in charge of the decisions. The hospital pharmacy, inside the hospital has pretty good control on how those decision are made. I can see the potential in a rural community where an administrator makes an ill advised decision to go into business with another pharmacy. That's probably not going to be the hospital pharmacist's decision; that could happen under this law and you need to keep that in mind. If somebody wants to add $50,000 to a pharmacy's bottom line in a hospital, which is probably losing money, to keep that operation going, they could do that under this bill. I want to be clear, if you decide to pass this, what the intentions are, and I think the amendment from the hospital association helps us clear that up.

Chairman Lee: I think citizens get and will continue to get exemplary service of care from the hospitals and pharmacists wherever they're working.

Anderson: Our concern here is opening up the law and the risks that we have to go through the courts.

Sen. Dever: I understand we don't have a shortage of pharmacists in North Dakota, but when a pharmacy is for sale, no one wants to buy it. Why is that?

Anderson: It's a combination of factors. For a rural community, it doesn't matter if you're hiring a doctor or a nurse or a pharmacist or a dentist; unless they're from that area and they want to return to a rural community, its hard to get somebody to go there. Additionally, you have to make some investment.

Chairman Lee talked about the problem of professionals moving to rural communities. (Tape 1 side B meter 2150-2290).

Curt McGarvey, President of the North Dakota Pharmacists Association

See written testimony (Attachment 7)

Chairman Lee: Have you had a chance to look at the proposed amendment?

McGarvey: I would like to talk to the board of directors before I comment, but I do feel it is a step in the right direction.

Gary Dewhurst, Pharmacist in Hettinger

Manager of a pharmacy. The problem with the bill, as I see it, the hospital, as the bill is now written, could put in a community pharmacy, even if I'm there. That would be a distinct disadvantage in competition to me, and an advantage for the hospital. They would have the physicians there who could steer business to the hospital owned pharmacy, and my business would go downhill. I sold my pharmacy to Thrifty White Drug and I still work there. So I've established a pharmacy in that community.

David Olig, Pharmacist in Fargo

Discussed a lot of the same ideas that the others did who testified in opposition to the bill.

Chairman Lee: Do you have a comment on the proposed amendment?

Olig: I don't think its a bad idea if they have the capital as Howard (Anderson) mentioned earlier if they are undercapitalized to start with. It would be a good idea if the hospital was there to bail out a pharmacy if it goes up for sale and there are no buyers. My fear is that the amendment will lead to the bill (the pharmacy will fail).

Bob Treitline, North Dakota Pharmacy

Treitline: Part of the bill is trying to address an access issue; our hospital in Dickenson does not own a pharmacy. They did propose putting in an outpatient pharmacy several years ago, just shortly after I opened. The community pharmacies got together. We resolved the access issue

because they were concerned that no one was open on Sunday, and that was a void of service for our community. At that time, the pharmacists decided what to do to provide that service in the Dickenson area. We went to a 24/7 availability. It works great. Not all of the pharmacist participate in that service, but it's a service that's very valuable in our community.

Mike Chase, Retail Pharmacist in Hazen, North Dakota

Consultant pharmacist for our local hospital. Pharmacies are having trouble staying solvent. I think a hospital pharmacy would be unfair competition.

No further testimony on SB 2283.

Chairman Lee closed the public hearing on SB 2283.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2283**

Senate Human Services Committee

☐ Conference Committee

Hearing Date February 8, 2005

Tape Number	Side A	Side B	Meter #
1		x	2975-end
2	x		00-1690
2	x		2,087-2325
Committee Clerk Signature			

Minutes:

Chairman Lee reopened discussion on SB 2283. All members were present.

Sen. Dever: I'd like to see how the committee feels about this one.

Sen. Brown: I'm in favor, and one of the reasons is that MeritCare Hospital in Fargo, which has a pharmacy at its main location, purchased the old Dakota Hospital on South University, about four or five miles away from their main campus, and they cannot put a pharmacy in there.

Sen. Lyson: Then I'll be upfront and tell you that I'm opposed to it. It wasn't my fault that MeritCare didn't take care of their business properly, and I'll speak that way on the floor if this goes through with a Do Pass.

Sen. Brown: In the rural parts of the state, we're losing pharmacies and there are 20 pharmacies for sale in rural North Dakota that cannot find buyers. If they close, somebody needs to pick up the slack--somebody needs to pick up the slack, and that could be the hospitals.

Sen. Lyson: There are others picking up the slack, and that is other pharmacies, and with Internet pickup and delivery

Sen. Warner: If the 20 pharmacies in rural North Dakota that can't find buyers, it's probably because they don't have the clientele. I'm inclined to favor Sen. Lyson's position. Hospitals have the option to finance pharmacies by contributing 49% of the ownership and putting one in there that way and still have an independent pharmacist. I think that process has served us very well, it's made sure we've had independent professionals in the communities and the contribution of those people have been immeasurable to the public health of those communities.

Senator Lyson discussed how the pharmacy in his hometown of Parshall handles business of another nearby small town and that, in general, the pharmacies do a good job handling the business of the rural communities.

Senator Brown said he was concerned with the future and is not convinced that MeritCare screwed up, but in fact bailed out Dakota Hospital and actually helped the community and shouldn't be penalized for that. Senator Warner agreed that the licensing permission wasn't lost in that transaction, it had been lost a lot earlier

Chairman Lee stated that she has friends that are pharmacists, both of whom are involved with MeritCare on each side of this bill. It's important to remember that this isn't just a MeritCare bill. Something could be worked out like expanding hours, but there isn't any money in it. I don't want the hospital's to take business away from the smaller pharmacies, but what do we do to make sure pharmacy services are available to all communities in North Dakota and what can we do, if anything, to make sure those services are provided?

Senator Lyson said that in his old home town, most of the surgeries are done in Minot but his town has two pharmacies and if the people got their prescriptions in Minot it would substantially cut down on their business. Maybe one or both might close. Chairman Lee stated that a lot of patients already get their drugs before being discharged, so it's hard to measure. So we're only talking about outpatient.

Sen. Dever: I see this as two different issues. One is the smaller communities and the other is the MeritCare situation. The hospitals have a captive customer base. Another question is the justification in being unique in requiring 51% ownership by pharmacists.

Sen. Lyson: I don't think we're that unique

Chairman Lee: Yes, we are.

Sen. Lyson: Not according to the stats I'm getting from my constituents.

Chairman Lee: They're telling you that lots of other states say they have to have 51% ownership by pharmacist?

Sen. Lyson: We're not unique' I'm not saying there are a lot of other states, but we're not the only one.

Sen. Dever: That's the reason we don't have them in Wal Marts.

Chairman Lee: Although Wal Mart has agreed to lease space to a pharmacy and get around the law right now. Wal Mart is not an issue right now. In your opinion, Senator Lyson, I sincerely don't know where I'm going with this, and I think there's a problem, but in your opinion, in the rural areas it's not an issue that those pharmacies might not be sold to another pharmacist so that it's not necessary to permit a hospital, if a pharmacy closes, to be able to sell to outpatient?

Sen. Lyson: Mr. Anderson said yesterday, that most of these small communities that are losing their pharmacies are being covered by another pharmacist down the line with Internet capabilities to get their medication to them, and I don't think it's necessary.

Chairman Lee: What does concern me, as far as our hearing is concerned, is that there was one gentlemen here who's a hospital pharmacist, who by his written testimony that was distributed after the hearing, who was so uncomfortable testifying against the members of his association, that he wouldn't stand up and testify. I saw the ballot that was sent out for the Association of Pharmacists to indicate how they felt about this bill, 400 people responded, 250 said yes and 150 said no. We were told an association representing 400 people and 400 pharmacists supported this bill; on the ballot, it you opposed it, you had to put in your name and at least one reason why you opposed it. That is not a user friendly bill, that is an intimidating way to require support and I was a little chagrined for the Association of Pharmacists misleading us a bit on whether their whole association of pharmacists support this; just a 50 vote swing on the issue and it would have been tied. Four hundred pharmacist do not support this bill, it's not that way at all. The association (North Dakota Society of Health System Pharmacists) supports it with a proposed amendment that states "does not apply to hospital pharmacies located on a licensed hospital site. In addition, if a retail pharmacy is the sole community provider for those services, the hospital in that community may purchase that pharmacy and locate in that community but outside the licensed hospital site." We haven't even talked about that, but that's another proposal from professionals in health system pharmacy. I'm not saying they're right, but we can't just blow off what they're telling us about that either.

Sen. Brown: Another thing about hospital pharmacies is that in my experience, they're carrying a better or more up to date group of pharmaceutical products. Sen. Brown gave a personal example. There are a lot of issues here. I'm from Fargo and represent places like MeritCare; pharmacy across the state is a huge issue and that's very well represented by the three or four pharmacy bills we have before us. Whether we deal with pharmacy this session, or the legislature deals with it next session, it is changing, and changing dramatically. I think that this bill would get us on the path to beginning to revise the whole pharmacy issue. And one of the issues is the pharmacists are getting squeezed financially. By the same token, we are getting squeezed. How many times are we all asked "what are you doing about holding down health care costs, and pharmaceutical costs; why are people going to Canada and yet the pharmacists, listening to their testimony, they don't want to deal with it. They want everything to stay the same, but it can't happen because it changing too fast.

Sen. Warner: One of the comments I've heard from pharmacists is the vast buying power of hospitals and individual pharmacies. Hospitals can negotiate much better discounts than individual pharmacists. The thing that never comes up in these conversations is determining the price of these pharmacies as they change hands. Maybe one of the reasons we have 20 small pharmacies that can't find buyers is because the asking price is to high relative to the customer base or earning potential. I'm not sure if having hospitals as potential buyers for these pharmacies improves their value, or a hospital in the area as a potential competitor depreciate their value?

Sen. Brown: Every small businessman thinks their business is more valuable than it really is on the open market. Who is the customer. More importantly, Sen. Warner, what is the service to

the patient/customer. I believe having a hospital as a potential buyer for a pharmacy, enhances its value. Consider the alternative, zero. If the pharmacy just goes out of business, he gets a lot less. At least with the hospital there, he would get something, maybe not what he thinks its worth, but better than a liquidation sale, especially when you add in blue sky. But it still boils down to, in my opinion, service to the customer. I think mail order is a thing of the future, but that isn't really good service to a small town, in comparison to me, who can go down to Osco and get a prescription in a half hour. I think hospitals, where they are located, are the wave of the future.

Sen. Dever: If a hospital owns a pharmacy, is it required that it be staffed by a pharmacist or can a doctor or nurse go into the medicine cabinet.

Sen. Brown: I think that gets into something else, and I'm sure that's covered. I'm sure a pharmacist has to dispense drugs.

Sen. Dever: In a small town hospital, that dispenses medicine in the middle of the night, are they under the supervision of the small town pharmacist?

Sen. Brown: A pharmacist is supposed to be on duty around the clock, 7 days a week

Chairman Lee: If you went to the emergency room at night and the hospital pharmacy was closed, how would you get your prescription, is that what you mean? Give me an example.

Sen. Dever: One of the witnesses was Mike Chase from Hazen. Hazen Hospital can dispense medicine if they need to on an individual basis. I'm not sure if that's under the supervision of Mike Chase. I'm sure they don't have a pharmacist at the hospital.

Chairman Lee and Sen. Brown: He's on call.

Sen. Dever: It was my understanding that they had a stock of medicine at the hospital that they could send home with the patient. Wasn't that part of the testimony, that if somebody came 25 miles they could just take it off the shelf without a pharmacist dispensing it?

Sen. Lyson: That's my understanding, from the guy from Hazen.

Sen. Dever: I think you can rest assured that if the Hazen Hospital opened a pharmacy or bought out Mike Chase, that they're not going to run a drug store (a dry goods type) out of the hospital, they're going to run a pharmacy out of the hospital. Is it going to be more than a glorified medicine cabinet? The hospital is altruistic in nature; they're nonprofit, working in the best interest of the community.

Sen. Brown: They would have to be a full line pharmacy. The pharmacy at MeritCare's main clinic is not a full line drug store like Osco, but they do carry some over-the-counter products.

Chairman Lee and Senator Brown discussed the relationship between Dakota Hospital, Dakota Clinic and MeritCare and their history (tape 1 side B meter 5400 - 6000).

Sen. Lyson: My pharmacy delivers to my house after hours.

Chairman Lee: Is there any information anyone on the committee wants that would help us put this to bed? I'd like to take care of this issue after break.

Chairman Lee closed discussion on SB 2283. No action was taken.

Chairman Lee reopened discussion on SB 2283.

Chairman Lee: Mentioned the proposed amendment from the North Dakota Hospital Association.

Senator Brown moved DO PASS on amendment (minutes dated 1/26/04 attachment 2); seconded by Senator Dever.

Sen. Warner: I see this amendment as moving it out of one sphere and putting it into an equally political sphere. I'd assume not mess with current law.

Sen. Lyson: We're just muddying the water.

Sen. Dever: Is this amendment to go after the word "pharmacies"

Chairman Lee: Mr. Gilbertson, would you like to explain the amendment?

Mr. Gilbertson explained the amendment.

Vote: 4 yeas, 1 nay, 0 absent

Senator Brown moved DO PASS on amended bill, seconded by Sen. J. Lee.

Sen. Dever: I have some concern about this. It seems to be a different issue in small communities, where they're short on pharmacies. I'm concerned that it provides a captive customer base to hospitals that have competition in the pharmacy business. I have concern that I'm still undecided.

Sen. Lyson: I cannot vote for this bill. I see it as a situation that we will lose rural pharmacies at greater rate than we're doing it now and it just don't fit with me and I can't vote for this. I'll let my feelings be heard on the floor.

Chairman Lee: Can you elaborate why you think rural pharmacies will fail at a more rapid rate if this passes?

Sen. Lyson: I think with the amendment we put in, you'll have hospitals coming in trying to buy the pharmacies. I think this whole bill is set up for the hospitals and not for the pharmacies, or the pharmacists and see it as another maneuver to take away the 51% ownership in pharmacies which I see as important to the state and I can't go along with it.

Sen. Dever: In small towns, the pharmacy is also the local drug store and a little concern that it may not only become no longer a local dry goods store, but not even a full service drug store. Ideally, keep the pharmacy in business.

Sen. Brown: The rural town pharmacy is dying off anyway, and are you doing them any favors in keeping them open, even as a retail soft goods store. This is an issue about service to patients and how well they can get service. I disagree that hospitals are going to be out trying to buy pharmacies, I think they'll be bailing out pharmacies from owners who can't sell to anybody else. It will immediately help some areas of the state and will eventually help all areas of the state.

Sen. Lyson: I disagree with the Senator from Fargo. Rural pharmacies are not going down. In fact, many are picking up the load of other places that may have closed and putting in a satellite store in those areas. I see this bill as a way to further the movement of small towns losing businesses. And as far as emergency needs, I see nothing that this bill will solve.

Chairman Lee: Do you think that telemedicine and telepharmacy will resolve all the issues, for example, with disease management.

Sen. Lyson: I don't think that will solve all the problems, nor do I think that a pharmacy in a hospital will solve that problem either.

Chairman Lee: Will having a pharmacist on site in that community instead of having a pharmacy technician with consultation with a pharmacist in a telepharmacy.

Sen. Lyson: You're talking like a big-city girl now and I think in most cases in North Dakota, the pharmacists that got up here and spoke said that they were on call 24 hours a day and they could be called. I don't know of any pharmacy in Fargo that's open 24 hours, and not in Williston either, but I do know a pharmacist that I can call 24 hours.

Chairman Lee: I would certainly agree that there are pharmacists available everywhere, and I don't think this is a big city versus small town kind of thing. I'm trying to be sensitive to what's happening in the rural areas. I don't think a pharmacy tech and a pharmacist in a small town are the same thing. I'm trying to figure out a way to keep the pharmacy in the small town, but it a pharmacy wants to sell and they can't sell, and that drug store will otherwise close, because there are very few 'blue skys' anymore...

Howard Anderson: There are a few for sale. I have a proposed amendment. We didn't agree with the bill as it was introduced, or agree with letting every hospital have a pharmacy anywhere they want one. This amendment will solve the rural health care problems.

Sen. Lyson: Are we opening the hearing again?

Chairman Lee: We're not opening the hearing. And we already have a motion on the floor to pass an amendment, but we'll take a look at Mr. Anderson's amendment first.

Sen. Warner: How many cities in North Dakota have hospitals?

Anderson: 56 and 47 licensed pharmacies, 37 in smaller communities

Chairman Lee: Is it reasonable to say there's a pharmacy in every city with a hospital but not vice versa? And we don't know how many communities have one pharmacy where there's a hospital.

Anderson: Right to first question

Sen. Dever: Since there's no amendments, would the hospitals be amenable to this?

Chairman Lee: Would you like a few moments to look it over?

Sen. Lyson: We have a motion on the floor, if they're willing to withdraw their motions and let somebody look at it, I don't know if we can do that in discussion

Chairman Lee: We'll figure procedurally how to do it, but I think it's rude not to give both sides the opportunity to see what's going on here. I'm not reopening the hearing. It we can find something that suits all parties, I don't think that's a bad thing.

Chip Arnold: We looked at the amendment, and offered his comments.

A vote was taken on the amendment:

Vote: 3 yeas, 2 nays, 0 absent Carrier: Senator Brown

Date: 2-8-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2283

Senate **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass amendment

Motion Made By Sen Brown Seconded By Sen Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner		✓
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 4 No 1

Absent 0

Floor Assignment _____

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

Date: 2-8-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB ~~2283~~ 2283

Senate **Human Services** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Sen Brown Seconded By Sen. J. Lee

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner		✓
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson		✓			

Total (Yes) 3 No 2

Absent Ø

Floor Assignment Sen. Brown

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

REPORT OF STANDING COMMITTEE

SB 2283: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2283 was placed on the Sixth order on the calendar.

Page 2, line 16, after "~~hospital~~" insert "located on a licensed hospital site. If a retail pharmacy is a sole community provider of pharmacy services, a hospital in that community may purchase that pharmacy and operate the pharmacy in that community at a location outside the licensed hospital site"

Renumber accordingly

2005 TESTIMONY

SB 2283

Attachment 1

NDHA
North Dakota Healthcare Association

Vision
The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.

Mission
The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

TESTIMONY ON SENATE BILL NO. 2283

Madam Chairman -- Members of the Committee:
My name is Arnold R. Thomas. I am the President of the North Dakota Healthcare Association. I am here to urge a **Do Pass** on SENATE BILL NO. 2283.

In 1963, this Assembly passed a law that required pharmacies to have a licensed pharmacist as their majority stockholder. Hospitals that owned pharmacies at the time the law was passed, were grandfathered-in. The law set up two classes of hospitals -- Those that could own pharmacies and those that could not.

The year was 1963 -- John Kennedy was President -- Elvis was playing on the radio. Small towns were robust and in the center of almost every Main Street, one could find the local pharmacy. Times have changed. Main streets have changed. Health care has changed.

We have been told that there are currently 12 small town pharmacies for sale. We have also been told that the purchase price for such an operation is in the $350,000 - $500,000 range. That's a large investment -- some would say a very risky investment -- in parts of rural North Dakota.

When surveyed, 32 of our hospitals indicated that pharmacy access in their communities was a major concern -- For some the concern was more immediate than others.

Let me tell you two stories that illustrate this concern.

Right now, if the local pharmacy closes at 5:00 pm and Martha goes to the emergency room, the hospital can provide Martha with enough medication to last until the commercial pharmacy opens and she can get her prescription filled. It's an inconvenience -- especially if Martha can't drive or if she has limited mobility -- or even if she isn't feeling well. However, if she was going to similar size rural hospital in anther part of the state that was grandfathered and operated a commercial pharmacy on its campus, she should have her prescription filled and not have to return to town at a latter time.

Again, the local pharmacy is closed and that evening, two year old Sally's parents drive 25 miles into town and present themselves at the ER because Sally has an acute ear infection. Sally is treated and the hospital provides enough medication to treat Sally's infection until the commercial pharmacy is open for service. Sally's parents can then make another round trip to get the prescription filled. Again, It's an inconvenience--It's time consuming--It's costly. Interestingly, if Sally's family lived in another part of the state where the local facility was

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grandfathered to operate a commercial pharmacy, the prescription could have been immediately filled. Besides the inconvenience to the family, is this good medical care? We think not.

But what happens, when that local pharmacy shuts down. I'm not talking about locking the door and turning off the lights at the end of the service day. I'm talking about locking the door and turning off the lights permanently.
The 1963 legislation prevents the local hospital from stepping up to the plate and owning its own pharmacy. The 1963 legislation requires Martha or Sally's parents to drive who knows how many miles down the road to fill their respective prescriptions. That's simply unjustifiable. We believe that all hospitals should be allowed to own a commercial pharmacy so that the Marthas and the Sallly's can be taken care of and not inconvenienced because health care delivery has changed and the law has not.

You may hear that the pharmacy technician program directly addresses these situations. This service multiplier effort by the professions deserves recognition and commendation. However, it is not equivalent to the services and consultation directly provided by a pharmacist.

You may also hear that Senate Bill 2283 will allow a hospital to own its own pharmacy and go into direct competition with the Main Street pharmacy.

It does permit that. But, those of you who live in or have lived in small towns understand local control -- and you probably also understand what I call the "café test." The city fathers -- the local leaders -- and the citizens of the town are in the best position to determine what is good and appropriate for them.

What you need to understand is that Senate Bill 2283 is not just a rural bill. It is a policy bill with implications every bit as great for urban areas.

Many of you know that Meritcare in Fargo bought Dakota hospital. That is now Meritcare's south campus. Dakota was exempt under the 1963 law but, due to various ownership changes prior the purchase of the hospital by Meritcare, the grandfather provision not longer applied and commercial pharmacy license request for the south campus, denied.

Because of the grandfather provision of the 1963 law, Meritcare can and does own a pharmacy on its North campus. Because of current provisions, it may not do so on its south campus. This is unlike the situation in Minot, where one hospital bought the other and was able to maintain two commercial pharmacies, one on each campus.

Thus, if you seek medical care on Meritcare' north campus, you may also fill your prescription at that location. A convenience factor. It you see a doctor at the south campus, however and need a prescription to be filled, as in the case of Martha and Sally, you'll have to access a commercial pharmacy somewhere else in the city.

You are probably equally aware that Innovis Hospital does not own its own pharmacy. Again, if a patient is treated at Innovis, the patient's may have the prescription filled at Meritcare's north

campus pharmacy, but not on the campus providing the medical services. Again, as in the story of Martha and Sally, inconvenience and medical practice questions arise.

You are also going to be told that if a hospital really wants a commercial pharmacy on its campus, it can agree to be a minority shareholder. It can invest up to 49 percent of the capital with a pharmacist owning the majority share. Nothing in Senate Bill 2283 would preclude a hospital from this business arrangement. It doesn't however make much business sense to limit the business choice to only one investment option.

Madame Chairman -- Members of the committee –

The current policy hasn't changed in 40 years. Senate Bill No. 2283 proposes a limited change to this 40 year old policy allowing all, not just some, hospitals to own a commercial pharmacy. It doesn't mandate any new policy direction with respect to pharmacy ownership -- But it does allow change by permitting any hospital to own and operate a commercial pharmacy on its licensed campus. What we propose is not open ended with respect to who may own a commercial pharmacy. It is limited to hospital ownership. We are opposed to any amendment to SB 2283 which seeks to modify or expand upon the change we are requesting.

In the rural areas, SB 2283 will allow the citizens of the towns maximum flexibility in determining how their pharmaceutical needs ought to be met. In the urban areas it will put those hospitals that are not grandfathered-in on a par with those that were in 1963. It will extend to those hospitals that are not grandfathered-in, the same ability to offer their patients one-stop shopping -- that is to see their doctors -- get their prescriptions filled and go home and get better.

We therefore respectfully request a Do Pass on Senate Bill 2283.

With that Madame Chairman, I am happy to answer any questions.

Attachment 2

PROPOSED AMENDMENT TO SENATE BILL NO. 2283

Page 2, line 15, insert "located on a licensed hospital site. In addition, if a retail pharmacy is a sole community provider of those services, a hospital in that community may purchase that pharmacy and locate in that community but outside the licensed hospital site."

Attachment 3

Senate Human Services
Wednesday, June 26, 2005
9:30 am - Red River Room

RE: Senate Bill 2283

Chairman: Senator, Judy Lee
Members of Senate Human Services Committee: Senator Dick Dever, Senator Richard Brown, Senator Stanley Lyson, Senator John Warner

I am here today as Chairman of the North Dakota Healthcare Association to speak on behalf of our membership in favor of SB 2283.

The hospitals of North Dakota as in other states have become the stewards of health care. In North Dakota we provide the highest quality of care and we do it for the least amount of reimbursement.

As we discuss and plan for the future, we see a crisis on the horizon in many of our rural areas. Access is going to be the key phrase in many of our communities if changes are not addressed today.

One area that is now being discussed is the access to pharmaceuticals in rural areas. Currently a licensed pharmacist owns and operates most of the rural pharmacies. As they retire very few are able to sell their business. The cost to purchase or set-up a pharmacy is beyond the means of young people today. The local hospital at this point can not make an offer due to the current ownership regulation.

Today many rural facilities are assuming the role of a retail pharmacy between 5:00 pm and 8:00 Monday through Friday and on weekends. If we operate a nursing home we can not legally supply pharmaceuticals to the residents.

We believe that the current regulation should be expanded to allow hospitals to either purchase or set up a pharmacy to provide a continuum of care, and to provide local accessibility to prescriptions as ordered by their attending physicians.

This is not just a rural issue; the problem extends to all communities across the state. I ask on behalf of the membership of the North Dakota Healthcare Association that you support the proposal change to the pharmacy ownership regulation.

Respectfully submitted,

Jerry E. Jurena, Chairman
ND Healthcare Association

Attachment 4

Medcenter One

Senate Human Services
Written Testimony in Favor of
Senate Bill 2283
January 26, 2005

Chairman Judy Lee and members of the Senate Human Services Committee,

My name is James Cooper, President/CEO of Medcenter One Health Systems (Lobbyist #473), I ask your support of SB 2283 which would allow hospital ownership of pharmacies.

Unfortunately, the demographics of North Dakota are changing, with rural areas becoming more sparsely populated and urban areas becoming more highly populated. These changing demographics have forced our institution to make some very difficult choices in the last few years. Due to financial concerns, our non-profit healthcare system has closed several small clinics in rural areas.

The North Dakota Healthcare Association has recognized the impact of the changing demographics and our need to plan for the future. We have developed a task force to discuss anticipated changes and develop a plan to insure appropriate access to high quality health care in the future.

Access to high quality health care cannot be achieved without access to needed medications. Some of our rural communities already have pharmacist-owned pharmacies that are now vacant. Communities or areas of the state that had two or three pharmacies are now down to one and young pharmacists are not necessarily interested in investing in or owning a local pharmacy. As students graduate from North Dakota State University or other college campuses, they are inundated with offers from larger pharmacies, hospital systems and out-of-state pharmacy chains. As a new graduate with at least six years of college and a doctorate in pharmacy, these young pharmacists do not want to invest in a business where they will be tied down and on call 24 hours/day, seven days/week.

Medcenter One, Inc.

300 North 7th Street
Bismarck, ND 58506-5525

Telephone: 701-323-6000
Website: medcenterone.com

Medcenter One has found that these young gifted pharmacists may be interested in a 40 hour/week job with benefits. Hospitals need to provide pharmacy services for their inpatient population and this bill would allow those hospitals to expand the hours and services it currently provides if and when it would be necessary.

As we move forward to meet the needs of the residents in our state, please allow hospitals to provide comprehensive high quality services including out-patient and retail access to pharmaceuticals. Please vote do pass on SB 2283.

Respectfully submitted,

James Cooper
President/CEO

Attachment 5

North Dakota 2005 Legislative Session

Senate – Senate Committee on Human Services

Testimony on Senate Bill 2283

January 26, 2005

Madam Chairman and Members of the Committee:

My name is Susan Bosak. I am the Executive Administrator for the Health Policy Consortium (HPC). The HPC is an association of the four largest integrated health systems in the State – Altru Health System in Grand Forks, Medcenter One Health Systems in Bismarck, MeritCare Health System in Fargo, and Trinity Health System in Minot. **I strongly encourage the Senate Committee on Human Services to bring Senate Bill 2283 to the floor of the Senate with a DO PASS with the proposed amendment as presented by Mr. Arnold "Chip" Thomas.**

Madame Chairman and Members of the Committee, I would like to discuss this bill and the amendment in the context of the patient. **This is truly about the need for access to pharmacy services at a time when the use of prescription drugs is even more important to the care plan for both acute and chronically ill patients.**

The amendment provides a clear policy statement on the recognition for hospital exemption to the ownership law. Healthcare leaders have expended much time and energy in an effort to conform to the current provisions extended by the Board of

Pharmacy. **The amendment being offered here today accomplishes a number of things in a manner that neither harms nor hinders the business of retail pharmacy – regardless of the ownership origin – while preserving the spirit of local ownership.**

The amendment offered allows hospitals – on the campus of their licensed facility – to offer retail pharmacy services consistently regardless of consideration of geography or population – North Dakotans need care in the western and eastern parts of the State. They need care early in the morning and late into the evening. They are equally likely to need services regardless if they are from a small, remote town or a new development on the edge of a more urban community.

This amendment is **limited in scope in that hospitals would not be seeking to open retail pharmacies in off-site locations but rather meet patient need where it is expected – at the point of service.**

Additionally, the provisions outlining **"sole community providers of retail pharmacy services"** takes into consideration those situations where a small community is at risk of completely losing the Main Street retail pharmacy presence. This provision allows for the inclusion of licensed hospitals – only in those demonstrated instances – the option to document community need for hospital ownership of retail services outside the confines of the physical hospital location.

It is my belief that this approach takes into account the sensitivities raised when the pharmacy ownership discussions occur. It meets the need of retail pharmacists to maintain a competitive presence in the marketplace. It allows for hospital ownership in those settings deemed appropriate – meaning the hospital care setting. It recognizes and accommodates the complex and sometimes daunting scenarios rural communities and business owners face.

I might underscore, this is good public policy as it relates to sound patient care. **How could more restrictive ownership provisions be good for what should be the focus of our discussion – patient need for pharmacy services.** Stepping outside of the interests represented here today, it becomes obvious that patients expect **and need pharmacy services regardless of ownership by a retail pharmacist or the hospital**. This must be our focus.

Madam Chairman and Members of the Committee – Please consider these points as you deliberate the merits of Senate Bill 2283 and the amendment offered before you.

Madam Chairman and Members of the Committee – Thank you for the opportunity to speak with you today. I am available to respond to your questions or to provide additional information at your request.

Attachment 6

BOARD OF PHARMACY
State of North Dakota

John Hoeven, Governor

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Rick L. Detwiller, R.Ph.
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Wahpeton, Treasurer

Senate Bill 2283

Senate Human Services Committee

9:30 AM – WEDNESDAY – JANUARY 26TH, 2005 – RED RIVER ROOM

For the Record, I am Howard C. Anderson, Jr, R.Ph., Executive Director of the North Dakota State Board of Pharmacy. Thank you for the opportunity to appear before you today. The North Dakota State Board of Pharmacy strongly supports the current law, which we refer to as "the pharmacy control law".

Many of you have seen the Article in the Blue Cross Blue Shield Newsletter called *Health Care Discussions.* In this publication, President and CEO Michael Unhjem, speaks of concerns for access and Pharmacy Director Tom Christensen says we have too many pharmacies in North Dakota. My goodness, 26 pharmacies per 100,000 in North Dakota compared with 16.5 in the next closest state. **WHAT A RINGING ENDORSEMENT FOR NORTH DAKOTA'S PHARMACY OWNERSHIP LAW.** Perhaps we should turn all economic development in North Dakota over to pharmacy. We have more competition, more access, more service to North Dakota patients then any other state. The one or two dollars that Blue Cross Blue Shield complains about paying in additional dispensing fees is well worth it. Our Pharmacists provide excellent service to the patients of North Dakota. Another quotation I can remember from President and CEO Michael Unhjem was *" pharmacy dispensing fees are not what is driving the cost of prescription drugs".* Pharmacy dispensing fees continue to gradually decline, while the cost of the drugs themselves continue to escalate.

Another issue which, Pharmacy Director Tom Christensen's Article does not point out, was pointed out in a *Fargo Form* Article "Medicare costs for prescription drugs in North Dakota are actually lower than almost all other states. Perhaps Blue Cross Blue Shield per patient, per month costs for prescription drugs are lower in North Dakota BECAUSE pharmacy provides such a high level of service to their patients here." Medications are taken appropriately, with proper counseling and patient information, and generics are dispensed at as high a rate as any place in the country. All this is due to the pharmacists of North Dakota operating under the Laws & Rules, You, as our Legislature have created over the years. This is certainly NOTHING to be **ASHAMED** of.

Whenever you want good patient care, and personal attention to the customer, you have to have enough time and enough professionals to provide that care. North Dakota

Pharmacists have that ability, because of the environment you have created for us. We are the best in the country. PLEASE do not let that slip away.

Pharmacy Director Tom Christensen's Article also states that perhaps more money would be invested by publicly held corporations in the mega-store business into telepharmacy to serve rural area's, if the ownership law was gone. I would suggest that companies whose marketing goal is to get people into their stores in the major cities are NOT interested in telepharmacy in rural areas. They have too much merchandise in their stores, where they use the pharmacy department to attract business into that store, to want to serve rural communities with telepharmacies. It is **North Dakota** which is the leader in the country in providing Telepharmacy Services to rural areas, and soon to rural hospitals. This is because of what you have allowed.

Allow me to review the History of this law for you. NDCC 43-15-35 was passed in 1963 by the North Dakota Legislature with the intention of keeping the professional pharmacist with his/her ethical standards, in control of pharmacies. The Oath of the Professional Pharmacist to keep concern for their patients uppermost in their professional practice contributes significantly to protection of the public's health, welfare and safety.

In 1963 when the law was passed, no one had ever envisioned hospitals would be in the out-patient pharmacy business. Probably, at that time, no one envisioned that they would employ most of the physicians either.

There have been attempts to legislatively repeal NDCC 43-15-35 in 1975, 1987 and 1993, and court challenges in 1968, 1972, 1982. In all cases, these attempts were defeated by large margins. We believe that every Governor since 1963 has supported the law.

In 1972, a decision by the North Dakota State Board of Pharmacy to deny a pharmacy license to Snyder's Drug Stores was appealed to the North Dakota District Court and the North Dakota Supreme Court. These courts relied on a 1928 US Supreme Court Decision called *Liggett v. Baldridge* to say the law was unconstitutional. The North Dakota State Board of Pharmacy appealed to the United States Supreme Court and in the case argued by Bismarck Attorney A. William Lucas, the US Supreme Court, by a 9 to 0 opinion reversed the 1928 *Liggett v. Baldridge* decision and upheld the Constitutionality of the North Dakota Law. On remand the North Dakota Supreme Court agreed. Attorney Lucas stated that he believes that this law has been one of the most thoroughly Constitutionally and Legislatively tested statute in the North Dakota Century Code.

In the decision, written by Justice William O. Douglas, he stated very clearly, *"those who control the purse strings control the policy"*. This has been the basic tenet from the beginning in the North Dakota State Board of Pharmacy's interpretation and applicati of this law.

Let me explain grandfathering. In 1963, a provision was made to allow pharmacies currently in business to stay in business as long as the ownership of those pharmacies did not change.

Until 1996 the Board of Pharmacy interpreted that to mean retail pharmacies. In 1996, the North Dakota Supreme Court said that it looked to them like hospitals, which had pharmacy permits in 1963, could do at their licensed locations, whatever they wanted to with their pharmacy permit. Even though legislators in 1963 did not envision hospitals in the out-patient business, many of them who continue to hold their pharmacy permits, are in the out-patient pharmacy business at their hospital's permitted location as grandfathered permit holders.

There are currently nine *grandfathered* hospital pharmacies in North Dakota out of the total of forty-seven licensed hospitals in the state. This Bill would allow all forty-seven Hospitals to own Pharmacies at any location they wish to choose.

Within the hospital where the hospital pharmacy is serving their in-patients, there are procedures which link the hospital pharmacist with the Pharmacy and Therapeutics Committee through the Medical Staff to the Board of Directors of the hospital. This allows all policies and procedures of the hospital/healthcare institution to be vetted through these several levels of control. Once we get outside the hospital/healthcare institution in a clinic setting or another location, these requirements do not apply. Simply, a non-pharmacist administrator may be directing the pharmacy staff and this is what NDCC 43-15-35 intended to prevent.

The Supreme Court accepted your reasons for our Law in 1973. Today we see workplace issues and medication errors headlined in the national pharmacy press. We see pharmacists in some pharmacies that have had to form a union in order to insist that they be allowed a bathroom, lunch or work break during their shifts. This does not happen in North Dakota. The environment you and your predecessors in the Legislature put in place has served North Dakota consumers well.

In North Dakota bean counters do not determine how many prescriptions must be filed before there is an additional pharmacist or pharmacy technician to help. Pharmacists make those decisions.

The ownership law is the best opportunity for pharmacists to be masters of their own destiny in the patient's best interest. The ownership law insures that pharmacists who have pledged their oath to uphold healthcare standards and professional ethics determine policy.

North Dakota can serve as a light for the rest of the county. We have the best level of pharmacy services in practice in North Dakota, compared to ANY state.

Remember, *"those who control the purse strings control the policy"*

We hope you agree and will keep it that way.

Thank you.

Attachment

North Dakota State Board of Pharmacy

PROPOSED AMENDMENT TO SENATE BILL No. 2283

Page 2 line 15; remove the strike through from "pharmacies furnishing service only to patients in that hospital."

Page 2 line 16; Add, "In addition, if a retail pharmacy is a sole community provider of those services, and the community is at risk of losing those services, a hospital in that community may purchase that pharmacy and continue to operate it within that community."

Attachment 7

TESTIMONY TO THE SENATE HUMAN SERVICES COMMITTEE
Senator Judy Lee, Chairperson

Wednesday, January 26, 2005

RE: SB 2283

Good morning Chairwoman Lee and members of the Committee. My name is Curt McGarvey and I serve as the current President for the North Dakota Pharmacists Association.

On behalf of the 650 pharmacists working in many different practice settings all across the state, we want you to know that we share the concern of the healthcare association with regard to the potential for small, rural communities who may face the loss of pharmacy care and services in the future. Our state's demographics do suggest that we may have some pharmacists retiring in the next ten years, and some of these could have pharmacies in small towns where it will be a challenge to find a younger pharmacist willing to invest in the ownership of a retail operation – especially given the significant decline in reimbursement fees, the conversion of many health plans to mail order, and the simple fact that some remote areas will not have enough patients to sustain a retail pharmacy operation.

In others words, recent trends in rural states like ours suggest that our future will demand consolidation, just as we have experienced with school districts. As healthcare providers we have a professional and ethical commitment to quality patient care, and therefore support efforts to ensure that patients have access to a pharmacy and the medication expertise provided by licensed pharmacists.

To address access issues, it may be a good idea to extend the ownership statute to include hospitals in those small, rural communities when the circumstances dictate that solution. But the language proposed in SB 2283 does not direct that to happen, and instead opens the door for hospitals to become pharmacy providers in any location even if there is no need in that community. For that reason we do not support SB 2283 as introduced.

Rather than miss the intended target -- which is to ensure continuing access for patients in more remote areas of the state - we recommend authorizing the North Dakota State Board of Pharmacy to make exceptions when necessary to accommodate these special circumstances. Since the State has designated the North Dakota State Board of Pharmacy to oversee and guarantee quality pharmaceutical care to North Dakota citizens, it is appropriate to include them in a process that seeks resolution to the challenges associated with patient access and to acknowledge their obligation to represent the State's interests in these circumstances.

Thank you for your time and consideration.

Curt McGarvey, President - ND Pharmacists Association
1661 Capitol Way, Suite 102, Bismarck, ND 58501 - 701.258.4968

Valley View Pharmacy, Bismarck, ND 701.223.5750

Good Morning Chairman Lee and Members of the Senate Human Services Committee. Thank you for the opportunity to present information on Senate Bill 2283. My name is Keith Horner. For the past 10 years I have been working as a Registered Pharmacist in the State of North Dakota in a hospital pharmacy. My role for the past 2 ½ years has been that of Director of Pharmacy Services. In this role, I am responsible(in conjunction with a Pharmacist-In-Charge) for a retail pharmacy operation solely owned by a hospital. I'm in support of Senate Bill 2283.

I would like to state for the record that I do not believe that a hospital owned retail pharmacy possesses any more risk to the health, safety, and welfare of the public than any other retail pharmacy independently owned by a registered pharmacist in North Dakota. Hospital owned retail pharmacies are subject to the same state and federal regulations that all retail pharmacies are subject to in the State of North Dakota. In many instances, hospitals already have additional regulatory processes in place compared to independently owned pharmacies. Many hospitals are accredited by the Joint Commission on Accreditation of Healthcare Organizations(JCAHO). The JCAHO has distinct standards in regard to medication safety. Many hospitals also have a corporate compliance program as a checks-and-balance system.

As the landscape of rural North Dakota communities continues to evolve, public policy needs to evolve as well. Passing Senate Bill 2283 would provide some rural communities another option for maintaining local pharmacy services into the future.

The urban areas of North Dakota are also evolving. Hospital campuses are now including a larger array of services and longer service hours for outpatient care. It is predicted that this evolution will continue. Passing Senate Bill 2283 will allow the larger medical centers in North Dakota to be able to provide similar comprehensive services to citizens of North Dakota that citizens from across the country can access.

I would be happy to answer any questions you may have. My home phone number is 258-8260.

Thank you for your time and consideration.

Keith L. Horner, PharmD, RPh
3811 Scenic Dr
Bismarck, ND 58504