MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1431

2007 HOUSE HUMAN SERVICES

HB 1431

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1431

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1751

Committee Clerk Signature Judy Schock

Minutes:

Chairman Price: calls the committee to order and opens the HB 1431.

Representative Chuck Damschen, District 10: Purpose of this bill is to not substitute generic drugs for treatment to epilepsy and convulsions can result in problems. The pharmacist would not be able to substitute a generic unless he consulted a physician. There are amendments coming down.

Art Taggart, Executive Director of the Epilepsy Foundation South Central Wisconsin: this is an issue we are actually working on in Wisconsin, and that is one of the reasons I ended up here this morning. Because there is no epilepsy foundation in ND we occasionally get calls. We serve a number of clients from ND. See attached testimony, purposed amendments, and epilepsy patient protection attached. The amendments are just to clarify language. It had nothing to do with co pays etc. We assume all generics are alike, they are not. Not that generics are bad, those monitored did not always get the same ingredients every time.

Representative Porter: How many states have been acted similar in legislation to what is being proposed today? The fiscal effect against the state budget for medical services for the Medicaid program is about 300,000 dollars a year. This is their estimate to put this bill in place.

Mr. Taggart: I think there are many states where this legislation is being, at last count something like 20 states now have it and to a large degree epilepsy sponsored bills. Epilepsy is quite unique. These medications work in the brain. It cost the state of Wisconsin nothing.

Dr Shiraz Hyder, Neurologist, Vice President of Medical Affairs, St. Alexis Neuroscience Center: See attached testimony. There are serious side effects even in different generic brands. You need a physicians input. Substituting medications should be with the consent of the physician. The physician knows best what that patient needs. A patient can die from this. They may not have a second chance.

Representative Porter: What happens when patient ends up over the 20 mark for an extended period of time, and what kind of side effects does that have on the rest of the body? Also when you are presented with a patient that has new on set of seizures or one you will be taking over the management of their seizures. How long does it take to get that patient into a therapeutic range and knowing where they are at and than not seeing them and keeping them seizure free?

Dr. Hyder: It can affect the liver, the kidneys, balance, cognation; it can affect their thinking, and concentrating, the higher the levels the more side effects. Everyone is different and it depends on the levels. It could take days and it could take months to get that patient under control.

Chairman Price: When you have a new patient, do you talk about the high costs especially those that have no insurance?

Dr Hyder: Absolutely, we talk about the cost of medication and tests, and what the benefits are.

Dave MacIver, I am representing myself. See attached testimony. I was getting my drugs from the veteran's administration. They wanted to take me off those medications. I left the

VA and went to my regular pharmacist, so I could have medications that I needed. I am scared to death of changing medications. My wife has retired from her job to drive me. The medications I am on now took a long time to get there. I am seizure free now for 7 months. I think it is up to me and my Doctor if there is a change in prescriptions. When I am seizure free, I don't want someone to change my medication. Once you get to the hospital the costs are high trying to find out what causes my seizures. I believe last summer it cost me 70,000 dollars.

Howard Anderson, Executive Director of the ND State Board of Pharmacy: See attached testimony. I am not so much in opposition of this bill, but I think it needs some changes. The physician will have to write on his prescription it is for epileptics, as some meds are also prescribed for other illnesses.

Mark Hardy, from Neche, ND I am a pharmacy student: I was very troubled when I heard about this bell. See attached testimony, along with generic brands.

Representative Kaldor: In your research, how do you account for how patients react from one medication to another, if they are indeed as you say equivalent.

Mr. Hardy: The difference between the two is that narrow margin in all generic products. The variation is in how it is made. The patient is always informed. As a pharmacist I would always try to keep their medication in stock. Yes, patients would like to stay on the same drug. There is a big worry for the patient, that this may not be the same. Typically we like to stay with the same manufacturer of the generic drugs.

Rod St. Aubyn, representing Blue Cross Blue Shield of ND: See attached testimony, Formulary anti convulsive drug list attached.

Dr. Brendan Joyce, Administrator of Pharmacy Services for the Medical Services Division in the Department of Human Services. See attached testimony. Yearly epilepsy totals attached.

Paul Sanderson, attorney in Bismarck with Zuger Kirmis & Smith, I represent Medco Health Solutions, Inc.: See attached testimony. Out position is based on the bill, we have not seen the amendments.

Chairman Price: Any other opposition for HB 1431? If not we will close the hearing on HB 1431.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1431

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1856

Committee Clerk Signature Judy Dehrock

Minutes:

Chairman Price: take out the HB 1431 on epilepsy.

Representative Weisz: The only things I will say I do believe the pharmacist have a legitimate point when they brought up that same drug can be used for other uses.

Committee discusses: If the Dr. wants to brand name a prescription, that's as far as it goes. The physicians need to be required to write on the prescription for epileptic. Sometimes the pharmacist runs out of inventory, do we run a risk giving them something or do we run a risk to not give anything. The committee discuss some language and what amendments to do. **Representative Weisz** moves amendments as changed. **Representative Kaldor** seconds the motion. A verbal vote of all yeas. **Representative Weisz** moves a due pass as amended **Representative Damschen** seconds the motion. The vote was 10 yeas 0 nays and 1 absent. **Representative Damschen** will carry to the floor.

FISCAL NOTE

Requested by Legislative Council
01/29/2007

Amendment to: HB 1431

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$1,164,498	$0	$1,362,707
Expenditures	$0	$0	$655,926	$1,164,498	$767,188	$1,362,707
Appropriations	$0	$0	$655,926	$1,164,498	$767,188	$1,362,707

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill would enact a new section 26.1-36 of the NDCC prohibiting a health insurer from imposing penalties for the dispensing of specific drugs for the treatment of epilepsy; and to amend and reenact section 19-02.1-14.1 of the NDCC restricting pharmacists from dispensing substitute epilepsy drugs.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact was calculated based on the historical expenditure increase of nearly 20% for this class of drugs for the 2007-09 biennium. For the 2009-11 biennium the increase was estimated to be 17%.

The expenditures noted above were calculated based on the 2007-09 projected utilization in the executive budget.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

For the 2007-09 biennium $1,164,498 in federal funds would be received.

For the 2009-11 biennium $1,362,707 in federal funds would be received.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

For the 2007-09 biennium a total of $1,820,424 would be expended; $655,926 in general funds and $1,164,498 in federal funds.

For the 2009-11 biennium a total of $2,129,895 would be expended; $767,188 in general funds and $1,362,707 in federal funds.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

For the 2007-2009 biennium the Department would need an appropriation of $1,820,424 of which $655,926 would be general funds and $1,164,498 would be federal funds.

Name:	Debra A. McDermott	**Agency:**	Dept of Human Services
Phone Number:	328-3695	**Date Prepared:**	01/29/2007

FISCAL NOTE

Requested by Legislative Council
01/19/2007

Bill/Resolution No.: HB 1431

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$1,164,498	$0	$1,362,707
Expenditures	$0	$0	$655,926	$1,164,498	$767,188	$1,362,707
Appropriations	$0	$0	$655,926	$1,164,498	$767,188	$1,362,707

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill would enact a new section 26.1-36 of the NDCC prohibiting a health insurer from imposing penalties for the dispensing of specific drugs for the treatment of epilepsy; and to amend and reenact section 19-02.1-14.1 of the NDCC restricting pharmacists from dispensing substitute epilepsy drugs.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The fiscal impact was calculated based on the historical expenditure increase of nearly 20% for this class of drugs for the 2007-09 biennium. For the 2009-11 biennium the increase was estimated to be 17%.

The expenditures noted above were calculated based on the 2007-09 projected utilization in the executive budget.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

For the 2007-09 biennium a total of $1,820,424 would be expended; $655,926 in general funds and $1,164,498 in federal funds.

For the 2009-11 biennium a total of $2,129,895 would be expended; $767,188 in general funds and $1,362,707 in federal funds.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

For the 2007-2009 biennium the Department would need an appropriation of $1,820,424 of which $655,926 would be general funds and $1,164,498 would be federal funds.

Name:	Debra A. McDermott	**Agency:**	Dept of Human Services
Phone Number:	328-3695	**Date Prepared:**	01/23/2007

Date: 1/24
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES HB 1431 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Move Amendments as changed

Motion Made By Rep Weisz Seconded By Rep. Kaldor

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price – Chairman			Kari L Conrad		
Vonnie Pietsch – Vice Chairman			Lee Kaldor		
Chuck Damschen			Louise Potter		
Patrick R. Hatlestad			Jasper Schneider		
Curt Hofstad					
Todd Porter					
Gerry Uglem					
Robin Weisz					

Total (Yes) "Click here to type Yes Vote" 12 No "Click here to type No Vote" 0

Absent 2

Floor Assignment

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

Date: 1/24
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES HB 1431 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Weisz Seconded By Rep Damschen

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price – Chairman	✓		Kari L Conrad		
Vonnie Pietsch – Vice Chairman	✓		Lee Kaldor	✓	
Chuck Damschen	✓		Louise Potter	✓	
Patrick R. Hatlestad	✓		Jasper Schneider		
Curt Hofstad	✓				
Todd Porter	✓				
Gerry Uglem	✓				
Robin Weisz	✓				

Total (Yes) "Click here to type Yes Vote" 12 No "Click here to type No Vote" 0

Absent 2

Floor Assignment Rep. Damschen

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

REPORT OF STANDING COMMITTEE

HB 1431: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1431 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact a new section to chapter 26.1-36 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "of specific drugs for the treatment of epilepsy; and"

Page 1, line 12, after "a." insert:

""Anti-epileptic drug" means any drug for the treatment of epilepsy or a drug that is used to treat or prevent seizures. The term does not include an anti-epileptic drug that is used to treat conditions other than epilepsy or to treat or prevent seizures.

b."

Page 1, line 14, overstrike "b." and insert immediately thereafter "c."

Page 1, line 17, overstrike "c." and insert immediately thereafter "d."

Page 1, after line 19, insert:

"e. "Epilepsy" means a neurological condition characterized by recurrent seizures."

Page 1, line 20, overstrike "d." and insert immediately thereafter "f."

Page 1, after line 21, insert:

"g. "Interchange" means the substitution of one version of the same anti-epileptic drug, including a generic version for the prescribed brand, a brand version for the prescribed generic version, a generic version by one manufacturer for a generic version by a different manufacturer, a different formulation of the prescribed anti-epileptic drug, or a different anti-epileptic drug for the anti-epileptic drug originally prescribed."

Page 1, line 22, overstrike "e." and insert immediately thereafter "h."

Page 1, after line 24, insert:

"i. "Seizure" means an acute clinical change secondary to a brief disturbance in the electrical activity of the brain."

Page 2, line 1, overstrike "f." and insert immediately thereafter "j."

Page 2, line 2, overstrike "g." and insert immediately thereafter "k."

Page 4, line 12, replace "dispense a therapeutically equivalent generic name drug" with "interchange an anti-epileptic drug or formulation of an anti-epileptic drug for the treatment of seizures or epilepsy without notification of the prescribing practitioner and

the signed informed consent of the interchange from the patient or the consent of the patient's parent, legal guardian, or spouse"

Page 4, remove lines 13 and 14

Page 4, line 15, remove "issued the prescription and the patient for whom the prescription was prescribed"

Page 4, line 21, after "prescription" insert "and the consent of the patient or the consent of the patient's parent, legal guardian, or spouse"

Page 5, remove lines 9 through 14

Renumber accordingly

2007 HOUSE APPROPRIATIONS

HB 1431

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1431**

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 2-8-07

Recorder Job Number: 3164

Committee Clerk Signature Diane Lhare

Minutes:

Rep Svedjan: We'll move to HB 1431...it's an engrossed bill with fiscal note dated Jan 29th.

Rep Weisz: Introduced HB 1431. Because of the unique nature of epileptic conditions and seizures and the interactions that the drugs may have, most physicians say that it's very important that you don't switch drug manufacturers without them being aware of it, because even though switching from one generic to another or a brand name to a generic, are essentially the same...there's no question that they meet the FDA guideline, so it's essentially the same drug, but on an individual case by case basis, they can change how the person reacts to the drug and where someone was on brand X of a specific drug, they switch to a generic of the same generic drug...all of a sudden, they're having an epileptic seizure. Obviously, if you have epilepsy, it's imperative to control those seizures...when you haven't had a problem for two years and went to the pharmacy and they tell you they don't have the one you had before, but here's this company's drug. The bill before you merely says that the pharmacies must notify the physician if he's going to substitute the manufacturer. This isn't a carve out, per say, it doesn't say that you can't use generics and it's not brand of generics or generics to brand, it's basically, whatever you're using now to insure that the doctor's notified. It doesn't say you can't switch them and in most cases you can and it won't have an effect, but in some cases there's such a tiny tolerance level between the action of the drug and what it

has on an individual case. I think if you ever pay attention to when FDA does all their test and even the wine that drug companies produce...the drugs produce different effects because of all the different issues on a unique individual. So what this bill says is merely there has to be some notification...so you've got a fiscal note that has a substantial fiscal effect...basically, I think that fiscal note is bogus...this is an identical law that was passed in Wisconsin...I have a copy of their fiscal...absolutely no fiscal effect. That fiscal note is assuming there's going to be a 20% cost increase in that type of drug...obviously, drugs going up 20% so it has to be because we passed this bill. I see absolutely no connection to this and what the price of drugs are going to do in the next biennium...I don't see any relation. The fiscal effect really doesn't take into account, will there be some that stay on brand name that might have switched to generic that's not in the fiscal note and how many just assume the 20% cost increase on the number...and that's what you have in front of you.

Chairman Svedjan: So the assumption is, not only the projected increase in drug prices, but it would also assume that all of these people would be switching?

Rep Weisz: No, what it assumes is that if drug costs go up 20%, that's attributed to the fact that there has to be notification. I would argue that there's absolutely no relationship...this does not say that if you're on a brand name that you can't be put on a generic. This applies from generic to generic or brand to generic or generic to brand...if you're on a generic and the pharmacist is out of that and he hands you a brand name drug that will cost more, it would require the same notification. This isn't about generic or brand name, this is about switching manufacturers and the potential they have to affect that individual whether he may have an epileptic seizure or not...that's why in my opinion (and the committees) the fiscal note did not address what the bill actually did. You'd have to make the assumption that if we didn't have

the bill and switch everybody to generics and they're not going to up 20%, so we wouldn't have had any increased cost.

Rep Carlson: I'm confused as to why we have to do this.

Rep Weisz: We don't have to do this...it's an issue...we had testimony from a lobbyist telling what happened to him when there was a substitution. The reason is and often times a person may not even be aware of it, but he's had a prescription for 9 months and the physician has to fine tune it and they finally have it under control, there's no problem...he hasn't had a seizure, he walks into his pharmacist and he's out of whatever drug you had so here's the same drug, but it's a different company so he grabs the drug and 2 hours later, he has a seizure. The physician had no idea why he had a seizure because there's no requirement to be in communications...this is to insure that the pharmacist doesn't just switch without the physician approving.

Rep Carlson: How prevalent is this...are there a 25 or a 1000 people affected by this? Also, explain to me...I don't understand why if you have to notify somebody that there would be a $665T general fund appropriation...it just doesn't make any sense to me. I agree with you on the fiscal note...where's the cost coming from?

Rep Weisz: I'll try to address the 1st question...I don't know how many, there's no cost effect...but if it's one, why would you want to have a seizure, maybe lose his license...maybe he's driving and has a seizure and he's no longer going to get a license. It has more of an effect of just a health care cost...this can have a tremendous effect...the doctors that testified said they had several, when they switched, either their levels went too high or too low...they caught in and took care of it. So is it prevalent, no, and as far as the fiscal effect...that was my point...the assumption is that everyone's going to switch from generics to brand name and we won't be able to switch and we won't be able to switch anyone from brand name to generics.

Rep Carlson: How many people came in from the public that have this problem and testified that they just had to have this?

Rep Weisz: I believe there were 3 individuals.

Rep Carlson: Were they doctors or were they the actual people taking the medicine?

Rep Weisz: People that were having epileptic seizures plus there were physicians.

Rep Wald: I think the bill is in the title of the bill where a pharmacist can't switch either brand name or generics for this particular ailment...then if you go to page 6, the last section, gives kind of a hold harmless to any practitioner or pharmacist. I still don't understand in relation to question the Rep Carlson asked about...why would this cost money if the pharmacist can't switch without telling the patient...where's the fiscal impact?

Rep Weisz: Again, I'm not defending this fiscal note, because I don't agree with it and if you look it says...was calculated on the historical expenditure increase of nearly 20% for this class of drugs and for the 0911 it was estimated to be 17% so their assumption is that if we pass this bill we will have the 20% increase but then if we don't pass the bill we'll have a 20% increase because that's the historical price...to me that equals 0.

Chairman Svedjan: This 20%, was that applied to our Medicaid drug increases, being that the lobbyist who spoke to you is not on Medicaid so this would only be calculated on the basis of Medicaid patients?

Rep Wiesz: This only applies to those on the formulary for the Medicaid...the $655T applied only to the Medicaid population.

Rep Thorson: When you had testimony on this bill on committee, were there representatives from the generic pharmaceuticals industry testifying about this issue?

Rep Weisz: No, there were none.

Rep Monson: I know you've said you don't understand either, but I just don't understand the funding costs...there's no appropriation in here, although the fiscal note says there is. Have we looked at any appropriation anywhere?

Rep Weisz: We did pass prior authorization 03 and that's the reason there's a fiscal not in front of us, it gave the department the ability to manage our Medicaid drug program. What they're saying is that this doesn't give them the ability to do that in this class of drugs and because the drugs go up 20%, all of that would have to be attributed to this bill in this fiscal note.

Rep Gulleson: I have the same concerns as Rep Carlson...I feel like it's within the professional prevue of the pharmacist to always question this on any category of drug...this could cross over into diabetes or whatever...the sensitivity...if we start looking at it and putting it into code (drug by drug) to me it takes away from what we look for just within the profession to protect and make sure we're receiving the appropriate drug for the appropriate condition and work with the physician. Why is this set apart from all the other categories and conditions?

Rep Weisz: I'm assuming you understand the issues better than I do, but again, if I'm taking a cholesterol drug and it's not working 100%...what's the worst that happens in that interim for my cholesterol to get higher? I'm not going to have a seizure while I'm driving and kill someone...it's not going to affect my life and that's why this was singled out, because it is such a fine line and it can have that kind of effect. Often times that's the way it is, we'll take this and if it isn't under control you come back and we'll try something different.

Rep Nelson: I think my question was answered...it was back to the prior authorization aspect of it, so in this regard the department could authorize a generic replacement without a doctor's order? Or do they want that? Is this a condition that they can do that?

Rep Weisz: Yes, they can decide that a generic is a good substitute...now even with prior authorization a doctor can still come and say no, they have to have a brand name and there's a process to go through and they can still get it. This doesn't say you can't take the generic, it just says whatever you're on now...you can't just switch it without at least a physician being part of it, so he knows and can monitor it and if works fine...it's cheaper.

Rep Glassheim: Could we have the Human Service Department explain the fiscal note?

Maggie Anderson, Department of Human Services: The fiscal note was built on factual information from our current expenditures in projecting that out into '07 '09 as well as information about these meds are currently used within the Medicaid population. I'll provide some of those statistics for you. Currently epilepsy medications account for 11% of the North Dakota Medicaid pharmacy expenditure and expenditures for this medication class, so it's not all of our drugs, has growing nearly 20% each year. According to statistics for epilepsy there's a 5% incident of epilepsy in the population, so if you take our population now, it would be roughly about 3,200 individuals in the whole population of North Dakota who may have this. Around 3,550 people on Medicaid are currently on this medication and 90% of that is due to the fact that there used for mood stabilization incidences rather then just strictly epilepsy. One of the reasons why the fiscal note is built the way it is...is this class of drugs is reaching it's maturity, which means that many of the products will coming off of patent in the coming years, so when we build our '07 '09 budget request, we knew that and accounted for a generic mix within this particular drug class as well as our mix of those generic 2 brand names within our other drug class. The bill does talk about notification to the practitioner, but if I could draw your attention to Page 4, Line 25...it says it needs notification of the prescribing practitioner and the signed informed consent of the interchange from the patient or the consent of the patient's parent, legal guardian, or spouse. So in building our fiscal note, we have to take into

consideration whether we believe a significant portion of people will find that consent form and we don't believe that would occur, so we built the fiscal note based on our drug expenditures, our history with those and the way that the bill was drafted indicating there needs to be notification to the practitioner but signed, informed consent of the recipient.

Chairman Svedjan: In building your fiscal note, was it based on the assumption that switches would made from generics to brand name or was that factored in or vice versa?

Maggie Anderson: Yes, there was an assumption that as these items came off of patent, that some individuals would switch to generic and Rep Weisz did speak to the portion of this same section of code that's being proposed to be changed where we have that brand name necessary, or dispense as written...portion in the rule. So if the practitioner indicates on the prescription: "dispense as written" or "brand name necessary" ...then the pharmacist if obligated to dispense that as written or brand name...they have to do that and if they don't the pharmacist exercises their professional judgment in counseling with the client in indicating that there's a therapeutic equivalent in the generic and based on our experience with our Medicaid population and our years of drug expenditures, we know that a percentage of those would go to generic. I also want to point out...in the testimony we provided to House Human Services...we do have the drug utilization review board and in the past interim, as that board has met and that board does include 2 psychologists, we asked if we should have any exemptions from the mandatory generic policy because right now unless "brand name is necessary" is written on the prescription the generic would be distributed and the ?DUR? board member said there should be no exceptions, including the epilepsy medications. It was with all of that that we put our fiscal note together, knowing that they're coming off patent, we figured we'd have a mix of generics...without being able to have that mix it's going to increase the expenditures for the Medicaid program in the drug area.