



MARCH 12, 2014

FRAUD WORKING GROUP REPORT

RECOMMENDATIONS TO SENATE COMMERCE COMMITTEE

PRESENTED BY: FRAUD WORKING GROUP

MINNESOTA SENATE



FRAUD WORKING GROUP REPORT

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OVERVIEW

Fraud involves using deception to dishonestly make a personal gain for oneself and, or create a loss for another. Fraud drains resources, affects public services, and perhaps of more concern, may fund other criminal activity. Fraud is a major and growing threat to public safety and prosperity, in Minnesota.

With that in mind, on May 14th, 2013, Senator Metzen, Chair of the Senate Commerce Committee, appointed Senator Jensen and Senator Gazelka as co-chairs of a working group on insurance fraud issues facing Minnesota citizens. The working group was to report back to the commerce committee with recommendations for the 2014 session. This document fulfills that request.

Legislators were recruited by the working group co-chairs from the Senate and House Commerce, Public Safety and Judiciary committees. Industry and consumer stakeholders were solicited through open invitation. Eleven legislators and over seventy industry professionals, law enforcement officials, consumer groups and associations, health provider professionals, government organizations, and individuals participated.

At the first meeting, held on June 18th, members were asked to put together their top three fraud issues and possible solutions. A matrix was developed from submitted issues and a regular meeting schedule was established. The group met the third Thursday of each month starting in September of 2013.

The submissions were divided into topics and early discussions revolved around the suggestions the group would be able to pass into law during the 2014 session. Although the range of submissions was broad, including workers compensation, life, and property insurance, the working group narrowed the scope of the conversations. Most of the conversations were focused on suggestions in the no-fault auto insurance system.

No-Fault Auto Insurance was enacted in the 1970's to help control the rapid growth of bodily injury related claims and legal costs that often drive auto insurance premium increases. Solutions targeted needed changes to help reduce the rising costs and changes to the current law that were attracting abuses and would deter fraudulent activity. There were no conversations by the group to repeal the no-fault system.

We heard testimony that many of the issues taking place in the current no-fault insurance system are not technically fraudulent or illegal actions under current regulations, but are certainly abuses. They require reforms to provide equal rights and protections to everyone, most importantly the consumer. Need for reform in this area is not new to the Legislature, but attempts at reform have not been successful. This working group did not review current proposed legislation, but asked members to identify solutions we can come to agreement on and develop legislative solutions for the 2014 session. We acknowledge there are remaining issues that need to be addressed.

Our final recommendation honors the incredible work done by the members of the working group. The participating legislators feel strongly there has been positive, motivated energy created by good people coming together with open minds, rolling up their sleeves and putting in the time and effort to find workable solutions to real problems. The establishment of a standing sub-committee would continue the work already started by the current working group.

The fight against fraud needs to be taken up by all of us. We need to do more of what we know works well, like sharing information to prevent fraud; and we need to find new approaches to new threats such as those posed by the increased use of, and dependence on, technology. Most of all, we need to do this together.

PARTICIPATING LEGISLATORS

Name	District	Representing
Sen. Vicki Jensen (co-chair)	SD 24	Commerce Committee
Sen. Paul Gazelka (co-chair)	SD 09	Commerce Committee
Sen. Jim Metzen	SD 52	Chair - Commerce Committee
Sen. Gary Dahms	SD 16	Commerce
Sen. Kari Dziedzic	SD 60	Judiciary
Sen. Barb Goodwin	SD 41	Judiciary, Commerce
Sen. Susan Kent	SD 53	Public Safety
Sen. Warren Limmer	SD 34	Judiciary
Sen. Eric Pratt	SD 55	Commerce, Public Safety
Rep. Raymond Dehn	HD 59B	House Commerce and Consumer Protection
Rep. Laurie Halverson	HD 51B	House Commerce and Consumer Protection

PARTICIPATING MEMBERS

Name	Organization	Name	Organization
Mary Krinkie	MN Hospital Association	John Choi	Ramsey County Attorney
Kevin Goodno	MN Chiropractic Association	John Ristad	Ramsey County Attorney
Kathryn Kmit	MN Council of Health Plans	Erica Schumacher	Ramsey County Attorney
Bob Johnson	Insurance Federation of MN	Nancy Haas	County Attorney Association
Domonic Sposeto	Independent Insurance Agents	Ben Schweigert	Hennepin County Attorney
Robyn Rowen	MN Insurance and Financial Services Council	Brandon Johnson	Dept of Commerce Fraud Bureau
John Kingrey	MN County Attorney's Association	Jonathan Ferris	Dept of Commerce Fraud Bureau
Kate Johanson	MN Chamber of Commerce	Marty Fleischhacker	Dept of Commerce Fraud Bureau
James Franklin	MN Sheriffs' Association	Peter Brickwedde	Dept of Commerce
Emily McGann	MN State Bar Association	Paul Hanson	Dept of Commerce
Jim Bartholomew	MN Minnesota Business Partnership	Mancy Leppink	Dept of Commerce
Mike Hickey	National Federation of Independent Business	Ben Wogsland	Attorney General
Patti Cullen	Care Providers of Minnesota	Jared Jordal	Dept of Public Safety
Dennis Flaherty	MN Police and Peace Officers Assn.	Melissa Finnegan	Dept of Health
Dave Pecchia	MN Chiefs of Police	Karen Mickelson	Dept of Health
Dave Kunz	Northwestern Health Sciences University	Vicki Kunerth	Deputy Inspector General
Dr. Everett Wells	Practicing Chiropractor	Jerry Kerber	Inspector General
Andrew Morrison	EvaluMed/Woodlake Medical Management and ExamWorks, Inc.	John Rajkowski	Department of Labor & Industry
Lisa Frenette	Frenette Legislative Advisors	Michael Mahoney	Essentia Health
Howard Goldblatt	Coalition Against Insurance Fraud	Buck McAlpin	North Memorial Health Care/MN Ambulance Association
Jared Esselman	Consumer Financial Protection Bureau	Tara Mulloy	Park Nicollet
Ron Elwood	Legal Aid	Barbara Cox	HealthPartners
Vicky Rizzolo	American Family	Kristin Loncorich	MN Hospital Association
Doug Franzen	Allstate	Joel Carlson	MN Association for Justice
Jan Naude	Farmers Insurance	Eric Hyland	Messerli & Kramer
Robyn Rowen	MIFSC	Leia Simon	Fredrickson & Byron
Christine Zimmer	Winthrop & Weinstine	Jack Davies	Former Senator
Elaine Love	Farmers Insurance	Sandy Neren	Messerli & Kramer

Name	Organization	Name	Organization
Mike Horan	State Farm	Erin Campbell	Messerli & Kramer
Greg Sather	Professional Insurance Agents	Margaret Van Heel	Stinson Leonard Street
Mark Kulda	Insurance Federation of Minnesota	Cindy Larsen	Independent Agent - Oakwood Insurance
Eric Dick	MN Medical Association	John Krapek	Morris GR/Physical Therapy Assc.
Ann Weber	Property Casualty Insurers Association	Stacy Forte	Massage Licensure
Lee Smiertelny	State Farm	Randy Morris	Morris GR/Physical Therapy Assc.
Aaron Cocking	MAFMIC	Jon Hebeisen	Western National Insurance
Kevin Holoch	Farmers Insurance	Margaret Vesel	BestLaw
Paul Godfrey	Farmers Insurance	Dave Johnson	BestLaw
Tammy Reno	MDLA	Robert Tennesen	Tennesen Law
Mike Urbanski	American Family	Lin Nelson	Blue Cross and Blue Shield of MN
Nick Grojean	State Farm	Nate Mussell	Fairview
Nancy Hylden	Federated Mutual	Edward Sheehy	UCare
Robert Freeman	HealthPartners	Erin Sexton	Mayo Clinic
Kerri Gordon	Allina Health	Geoff Bartsh	Medica
Maria S. Doughty	Allstate	Blaine Hendrickson	Allstate
Shirlyn Lee	Allstate	Aaron Patterson	Allstate

MEETINGS

JUNE 18, 2013 – St. Paul

SEPTEMBER 12, 2013 – Brainerd

SEPTEMBER 19, 2013 – St. Paul

OCTOBER 17, 2013 – St. Paul

NOVEMBER 21, 2013 – St. Paul

DECEMBER 19, 2013 – St. Paul

JANUARY 16, 2014 – St. Paul

FEBRUARY 13, 2014 – St. Paul

ISSUE MATRIX

Issue	Category	Meeting Discussed	2014 Session	Future Session
No Fault Auto				
Arbitration Process	Judiciary	Dec. 19		x
Right of Appeal 72A.327	Judiciary		X	
Consolidation of Claims	Judiciary		X	
Treatment Standards	Medical	Nov. 21		X
Fee Schedule	Medical	Nov. 21		X
Repackaged Drug Regulation	Regulatory	Sept. 19	X	
Penalties for Fraud Convictions	Judicial	Dec. 19	X	
Provider Oversight		Oct. 17		
MRI/CT Regulations	Regulatory			X
Massage Licensure	Regulatory			X
Batch Billing	Regulatory		X	
Corporate Practice Regulation	Regulatory			X
Provider Testimony	Regulatory			X
Soft Tissue Treatment	Medical			X
Independent Medical Evaluations	Medical	Nov. 21		X
Victim Solicitation		Sept. 19		
Unfair Advertising Prohibition	Judicial			X
Accident Data Privacy	Judicial		X	
Misrepresentation of Auto Garaging	Regulatory	Oct. 17		X
Personal Injury Protection Levels	Medical	Nov. 21	X	
Life				
STOLI Fraud	Regulatory	Dec. 19		X
Statutes for Misrepresentation	Judicial	Dec. 19		X
General				
Uniformity in Licensing				
Include Violations in Other States	Regulatory			X
Penalize Enablers of Fraud	Regulatory			X
Increase Information Exchange		Jan. 16		
Insurers	Regulatory		X	

Issue	Category	Meeting Discussed	2014 Session	Future Session
Law Enforcement	Regulatory		X	
NICB	Regulatory		X	
Increased Prosecution Resources		Jan. 16		X
Allow Civil Penalties by Departments		Jan. 16		
Commerce	Judiciary		X	
Labor and Industry	Judiciary			
Increase Public Awareness of Fraud		Jan. 16		x
Insurance/Provider Ownership Tracking				x
Other				
Uninsured Motorists Proof of Insurance	Regulatory	Sept. 19	X	

DOCUMENTS FOUND IN APPENDIX C

Documents	Submitted by	Submitted Date	Reference Number
Initial recommendations	American Family Insurance	7/22/2013	001
Initial recommendations	Coalition Against Insurance Fraud	7/15/2013	002
Initial recommendations	American Insurance Assc.	7/19/2013	003
Initial recommendations	Farmers Insurance Group	7/22/2013	004
Initial recommendations	Insurance Federation of Minnesota	7/22/2013	005
Independent medical evaluation recommendations	Koll, Morrison, & Hagstrom	7/2/2013	006
Memorandum on IME issues	Koll, Morrison, & Hagstrom	7/3/2013	007
Response to IME proposal in H.F. 1331	MN Defense Lawyers Assc.	3/15/2013	008
Initial recommendations	MN Insurance and Financial Services Council	7/1/2013	009
Initial recommendations	MN Association of Exterior Specialists	8/20/2013	010
Initial recommendations	Property Casualty Insurers Assc. Of America	7/23/2013	011
Initial recommendations	State Farm Insurance	7/22/2013	012
Initial recommendations	Stich, Angell, Kreidler, Dodge & Unke	7/23/2013	013
Initial recommendations	Surety & Fidelity Assc. of America	7/23/2013	014
October submission	Coalition Against Insurance Fraud	10/17/2013	015
October submission	MN Chiropractic Association	10/17/2013	016
November submission	Dr. Everett Wells	11/21/2013	017
November submission – 1	Integrity	11/21/2013	018
November submission – 2	Integrity	11/21/2013	019
November submission	Koll, Morrison, & Hagstrom	11/21/2013	020
November submission	MN Hospital Assc.	11/21/2013	021
December submission	MN Insurance and Financial Services Council	12/19/2013	022
December submission – 1	MN Ambulance Assc.	12/19/2013	023
December submission – 2 (PPT)	MN Ambulance Assc.	12/19/2013	024
December submission	Dr. Everett Wells	12/19/2013	025
January written testimony	Coalition Against Insurance Fraud	1/16/2014	026

Documents	Submitted by	Submitted Date	Reference Number
Final recommendations	Insurance Federation of Minnesota	1/16/2014	027
January submission	Dr. Ryan McCartney – Noran Neuro Clinic	1/16/2014	028
Final recommendations	Minnesota Association for Justice	1/16/2014	029
Final recommendations	David Kunz	1/16/2014	030
January written testimony	Tim Lynch, NICB	1/16/2014	031
Peer Review Fact Sheet July 2012	MN Physical Therapy Association	11/21/2013	032

RECOMMENDATION 1 - RIGHT OF APPEAL 72A.327

This provision provides for a unique type of no-fault medical appeal and has not been used since it's passage. This law duplicates the longstanding arbitration law used in our no-fault system and contains many ambiguous and potentially conflicting provisions, which opens the door to unwanted system abuses.

We recommend 72A.327 be repealed.

RECOMMENDATION 2 - PRESCRIPTION DRUG REGULATION

There is increasing evidence of exorbitant and unfair price markups on prescription drugs in Minnesota under no-fault coverage. Fraudsters dispense re-packaged drugs with different drug id numbers in the doctor's office at mark ups up to 1,000 percent of what those prescriptions cost at a local pharmacy. Consumers are impacted because their no-fault benefits are being depleted to cover these inflated drug costs, when they could pay much less by going to the pharmacy.

We recommend that no-fault coverage should limit reimbursement to the established average wholesale price, plus a dispensing fee.

RECOMMENDATION 3 - PENALTIES FOR FRAUD

One of the most disturbing trends in insurance fraud is the migration to our state of medical providers and others from other states who have come here specifically to abuse our No Fault Auto Insurance system.

We recommend that the state adopt regulation to allow the deauthorization of providers found to be guilty of fraudulent activities from being able to receive payment for the fraudulent medical services.

RECOMMENDATION 4 – CONSOLIDATED ARBITRATION CLAIMS

Recent court decisions have expanded the arbitration remedy to allow vendors, and medical providers, to bring claims in arbitration and to consolidate hundreds of individual claims, under the statutory limit of \$10,000, without limitation on the total dollar amount. In some cases, these claims add up to 1 million dollars or more.

We recommend limiting the ability consolidation of claims in no-fault arbitration, while allowing for additional recourse in district court.

RECOMMENDATION 5 - ACCIDENT DATA PRIVACY

There is a Minnesota law that allows the release of accident report information to third parties. The data is then sold to providers who contact the victim attempting to solicit them for treatment.

We recommend a restriction on accident report disclosure to the general public by limiting the amount and type of data that can be released to somebody other than those listed on the report and to repeal the section of state statutes that allows the purchase of accident report data by third-parties.

RECOMMENDATION 6 - PERSONAL INJURY PROTECTION LEVELS

Current PIP levels are not adequate to respond to lost resources by injured families.

We recommend the disability and income loss benefits increase from \$250 to \$500 per week, funeral benefits increase from \$2,000 to \$5,000, and survivors economic loss benefits increase from \$200 to \$500 per week.

RECOMMENDATION 7 - INCREASE INFORMATION EXCHANGE

The ability to use technology to track information and to analyze that information has changed over time and our laws have not kept up with those changes. An insurer that suspects fraud may see what appears to be a small dollar fraud, but using proper technology and exchanging information on suspected fraud, would uncover larger organized fraud rings that have kept up with changes in technology. Criminals seize on industry isolation. Insurer to insurer and law enforcement protection leads to better cooperation and timely exchange of information. Without the liability protection, insurers are reluctant to disclose potential criminal fraud for fear of bad faith or malicious prosecution. Nearly 30 states have strong information sharing protection laws.

We recommend changes in statute 60A.652 that make clear that insurance support organizations, can share information with prosecutors and law enforcement and receive the protections from liability.

RECOMMENDATION 8 - CIVIL PENALTIES BY DEPARTMENTS

With criminal prosecution doubtful, a civil remedy would assure that justice is achieved against those committing fraud.

We recommend the Commerce Department be authorized to bring civil penalty not exceeding \$25,000 for each act of insurance fraud and order restitution to an insurer or self-insured employer of any insurance proceeds paid relating to a fraudulent insurance claim. The Commissioner shall consider the nature, circumstances, extent, gravity, and number of violations, the degree of culpability of the violator, prior offenses and repeated violations, and any other matter the Commissioner considers appropriate and relevant. Also, if an administrative penalty is not paid after all rights of appeal have been waived the Commissioner may bring a civil action in a court of competent jurisdiction to collect the penalty, including expenses and litigation costs, reasonable attorney's fees and interest.

This would not affect an insurer's right to take any independent action to seek recovery against a person.

RECOMMENDATION 9 - UNINSURED MOTORISTS PROOF OF INSURANCE

We recommend the establishment of a formal task force to examine solutions to the verification of insurance issues we face in Minnesota.

RECOMMENDATION 10 – BATCH BILLING

Under the current system, there is nothing to prohibit providers from holding medical service claims until they sending large batches of claims to insurers all at once. This complicates the process of reimbursement and payment of providers, which can lead to hardship for victims. The system would benefit from a more streamlined approach.

We recommend establishing a defined timeline for the submission of claims by providers.

RECOMMENDATION 11 - FUTURE OF WORKING GROUP

The recommendations in this report are just the beginning of the work the group has committed to completing. There are several other topics not on the matrix important including property insurance and work comp. Members of the working group have committed to looking into and finding solutions for all of these issues.

We recommend the chair of the Commerce committee establish a standing sub-committee to continue the work of the working group. There were several conversations regarding the development of smaller sub-groups that would continue to work over the interim similar to the work done during this interim and work through the sub-committee to make recommendations and formulate legislation for future sessions.