



# CHRIS KAPENGA

WISCONSIN STATE SENATOR

## Testimony on Senate Bill 238

*Senate Committee on Health and Human Services*

September 22, 2015

First, I would like to thank Chairman Vukmir and the members of the committee for holding a hearing on Senate Bill 238. Additionally, I would like to thank Representative Jacque for his leadership on this issue with Assembly Bill 311.

The federal 340B Drug Discount Program was created in 1992 and requires drug manufacturers to provide outpatient drugs to eligible healthcare organizations and covered entities at bargain basement prices.

The Wisconsin Department of Health Services (DHS) has been under the impression that federal guidance restricts non-profit Medicaid providers to the actual acquisition cost of medication plus a reasonable dispensing fee. However, there have been reported instances of overcharging that have led to the drafting of this legislation.

According to a report gathered by Inspector General Alan White, payments in excess of actual acquisition cost plus a reasonable dispensing fee totaled more than one million dollars were made to Newcap WHS from January 1, 2010 through December 31, 2011. In response to the report issued by the inspector general, NEWCAP claimed that Wisconsin statute did not require them to seek reimbursement for only the actual acquisition cost plus a reasonable dispensing fee. Rather, NEWCAP was intentionally overcharging up to the "maximum allowable fee" per verbal instructions given in 2009 from several senior DHS officials. One of the officials involved was Diane M. Welsh, who served as the chief legal counsel for DHS at the time. She now represents NEWCAP and Family Planning Health Services, Inc. in her capacity as an attorney for von Briesen and Roper, s.c.

This bill clarifies that certain entities, when billing the Medical Assistance (MA) program for reimbursement of a prescription drug, are to bill the actual acquisition cost of the prescription drug and the reasonable dispensing fee charged under the MA program. Allowing certain entities to overcharge, while hospitals and other organizations are responsibly charging for reimbursement, is not fair or equitable.

I ask you to consider the recommendation of Senate Bill 238 for a vote in front of the full Senate. Thank you again, Chairman Vukmir and members of the committee, for taking the time to hold this public hearing. I look forward to working with you on the passage of this legislation.



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**TO: Members of the Senate Committee on Health and Human Services**  
**FROM: Representative André Jacque**  
**DATE: September 22, 2015**  
**RE: Senate Bill 238**

Chairwoman Vukmir and Senate Health and Human Services Committee members:

Thank you for the opportunity to testify before you again today in support of Senate Bill 238.

SB 238 will close a loophole secretly created for certain entities towards the end of Gov. Jim Doyle's administration which crafted an additional \$4.5 Million per year taxpayer subsidy for Planned Parenthood as the largest beneficiary, and additional amounts for certain other providers. This bill requires that family planning and STD clinics which choose to acquire drugs at the heavily discounted rates available through the Medicaid 340B program to return to billing the state administered Wisconsin Medicaid Program at the actual acquisition cost (rather than their current heavily inflated rate) plus a reasonable dispensing fee. This change will bring Planned Parenthood and other entities back in line with the many other Wisconsin 340 B participants, the majority of other states, and the original 340 B program guidance while saving millions of taxpayer dollars.

SB 238 simply directs Medicaid 340B-covered entities to charge back to Medicaid and taxpayers the actual acquisition cost of pharmaceuticals they purchase through the program, plus the dispensing fee allowed through the Wisconsin Medicaid program. While the other Wisconsin 340B program participants have already been following this practice, under Gov. Doyle's administration, special guidance was given in 2009 to Planned Parenthood and a small subset of others to dramatically jack up their billing of taxpayers to the maximum allowable charge, including verbal guidance by the former DHS chief legal counsel during the Doyle administration which negated the previous policy despite being contradicted by Wisconsin's 340 B provider agreement, which indicates that 340 B providers should bill their actual acquisition cost plus a reasonable dispensing fee.

The 340B Drug Discount Program is a federal government program created in 1992 that requires drug manufacturers to provide outpatient drugs to eligible health care organizations/covered entities at bargain basement prices. Participation by non-profit entities themselves is voluntary, and according to DHS, only about half of Wisconsin's 95 family planning providers are enrolled in the 340 B program. The original federal guidance for the program clearly established that Medicaid billing should only be at actual acquisition cost plus a reasonable dispensing fee.

To illustrate the difference between billing actual acquisition cost and overcharging taxpayers, according to DHS, "in reviewing audits of 340B providers with 2010 dates of service, the OIG found discrepancies in how 340B providers billed for Ortho-Cyclen. One hospital-based 340B pharmacy billed Wisconsin Medicaid \$15 for 84 tablets and the provider was reimbursed \$15. A 340B family planning clinic provider billed Wisconsin Medicaid \$95 for 84 tablets on the same date of service and was reimbursed \$54.23. The ingredient costs ascertained from the invoices reviewed from both providers were nearly identical at \$12.20 and \$12.03 respectively." In other words, without this legislation, 340B program participants will remain free to charge taxpayers for a drug at a rate many, many times more what it cost them to acquire it. Planned Parenthood of Wisconsin has publicly claimed through the media that eliminating their overbilling of taxpayers for drugs acquired through the 340B program would result in a \$4.5 Million annual reduction in their subsidy by taxpayers.

Senate Bill 238 will return these entities' billing to a standard that both the Wisconsin DHS and the federal government have indicated should be re-established. Again, it is important to remember that participation in the 340 B program is voluntary- there are entire states without 340 B program participants. Entities currently taking advantage of the taxpayers through this loophole for the most part existed prior to the establishment of the 340 B program in 1992, and before the billing standard of actual acquisition cost plus a dispensing fee was selectively changed for some providers in 2009. Planned Parenthood operates in many, many states which enforce the actual acquisition cost plus dispensing fee billing requirement for 340 B providers. While I understand that Planned Parenthood and others have enjoyed the significant enhanced taxpayer subsidy gifted them by the Doyle administration, SB 238's elimination of this billing loophole should certainly not cause any 340 B participant to close its doors.

Thank you for your consideration, and we will be happy to answer any questions at this time.



AB311/SB 238 Catholic Guild Support

We, the members of the Milwaukee Guild of the Catholic Medical Association, support AB 311/SB 238. This bill will forbid unbundling of services and prevent organizations from billing above the actual acquisition cost. This will free up scarce Title 19 resources which provide healthcare for the most needy among us.

Cynthia Jones-Nosacek, MD

President Milwaukee Guild of the Catholic Medical Association



WIC Program | Health Education and Promotion | Client Advocacy | Reproductive Health Care

Family Planning Health Services operates 10 clinic locations in 9 counties throughout the state of Wisconsin, in rural and urban areas with limited health care access. Providing health care services that include:

- early pregnancy diagnosis and referral for prenatal care
- early detection of cervical and breast cancer; including diagnostic evaluations for high risk cervical cancer patients
- prevention and treatment of STI/STD's
- referral for domestic or sexual violence services
- well woman exams; HPV screening and vaccinations
- HIV screening and education
- birth control education and services

There are over 165, 000 women needing affordable reproductive health care in the counties we serve.

Last year, we provided essential health care services to over 5,000 women, and 400 male clients.

We saved Wisconsin taxpayers over \$11,269,700 through preventative health services each year.

Inclusion of "k" in SB238 would reduce Medicaid reimbursement *drastically* below the cost of providing services, and significantly reduce availability of services to women and families. And the result would actually be significantly *higher* costs to Medicaid.

If you cannot vote "NO" on SB238, then strike out reference to "k" under "covered entity".

## 2014 Health Benefits and Cost Savings of Publicly Funded Family Planning

### Calculated benefits and cost savings based on 5,000 clients per year

# of unintended pregnancies prevented	1,300
# of unplanned births prevented	650
# of abortions prevented	450
# of unplanned births after short (<18 months) inter-pregnancy intervals prevented	170
# of unplanned preterm/low-birth-weight births prevented	90
Maternal and birth-related gross costs saved from contraceptive services provided	\$8,590,050
Maternal and birth-related gross costs saved from contraceptive services provided	\$8,590,050
# of chlamydia infections prevented	40
Gross costs saved from Pap and HPV testing and vaccinations	\$4,810
Total gross savings	\$8,880,260
Total family planning costs	\$1,084,390
Total net savings	\$7,795,870



ProLife  
LOVE. FOR LIFE. WI.

**Testimony / Senate Bill 238, Eliminating Inflated Medicaid Drug Reimbursement for Wisconsin Family Planning Providers**  
**Senate Committee on Health and Human Services**  
**By Matt Sande, Director of Legislation, Pro-Life Wisconsin**

**September 22, 2015**

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Good morning Chairman Vukmir and Committee members. My name is Matt Sande and I serve as director of legislation for Pro-Life Wisconsin. Thank you for this opportunity to express our strong support for Senate Bill (SB) 238, legislation that would eliminate heavily inflated Medicaid contraceptive drug reimbursement rates for Wisconsin family planning providers. Specifically, SB 238 would reimburse Wisconsin's Medicaid family planning providers, including Planned Parenthood of Wisconsin (PPWI), at actual acquisition cost or the actual cost providers pay for contraceptive drugs under the federal 340B drug program plus the standard Medicaid dispensing fee.

A June 2011 report by the Office of the Inspector General (OIG) in the federal Department of Health and Human Services (DHHS) examined state Medicaid policies and oversight activities related to 340B-purchased drugs. Under the federal 340B Drug Discount Program, pharmaceutical manufacturers are required to provide covered outpatient drugs to eligible health care entities, known as covered entities, at discount prices. Covered entities include family planning clinics, federally qualified health care centers and disproportionate share hospitals. 1993 Health Resources and Services Administration (HRSA) guidelines directed covered entities to bill at actual acquisition cost (AAC) for 340B drugs. In 2000, HRSA redirected covered entities to refer to their respective states' Medicaid policies for appropriate billing practices. Presently, the Affordable Care Act requires the DHHS Secretary to issue new billing methodologies.

In Wisconsin, PPWI and other family planning providers bill Medicaid high above what they actual pay for the heavily discounted 340B birth control drugs. A December 12, 2014 story in the Milwaukee Journal Sentinel reported that Medicaid pays \$26.02 for a month's supply of birth control pills that typically costs family planning organizations between \$9 and \$15. This standard payment is referred to as the "usual and customary charge up to the maximum allowable fee." Senate Bill 238 would curtail the exorbitant contraceptive drug reimbursement rates for PPWI and other Medicaid family planning providers participating in the 340B drug program by requiring them to bill Medicaid at AAC as most states already do.

According to the OIG DHHS report, 25 states have written policies that direct covered entities to bill Medicaid at cost (AAC) for 340B-purchased drugs. Of the 25 states that do not have written 340B policies, 16 reported that they expect covered entities to bill at AAC including Wisconsin. An April 15, 2015, letter from DHS Secretary Rhoades to Senators Cowles and Kerkman, co-chairs of the Joint Audit Committee, confirmed that in response to the federal DHHS OIG Survey in March 2010 regarding Medicaid reimbursement under the 340B Program, DHS staff indicated 340B participants should bill their actual acquisition cost for 340B purchased drugs. Importantly, if a state's Medicaid policy is to bill 340B drugs at

(over)

AAC then the state receives the full benefit of the 340B discount. The 1993 HRSA guidance states that billing at AAC “will assure that the discount to the covered entity will be passed on to the State Medicaid agency.”

From the State of Wisconsin’s perspective, in the interests of good government and fiscal stewardship it is appropriate if not desirable to reimburse 340B drugs at cost. From Pro-Life Wisconsin’s perspective, the confidential provision of abortifacient hormonal birth control drugs, such as the morning-after pill, the patch, and Ella, to adults and minor children should not be publicly funded at all! It is bad enough that millions in taxpayer-funded family planning dollars annually subsidize chemical and surgical abortions through Wisconsin’s Medicaid program, without the piling on that has been occurring with inflated birth control drug reimbursement rates. Senate Bill 238 provides a common sense approach that will reimburse Medicaid family planning providers, including PPWI, what they actually pay for contraceptive drugs, nothing more and nothing less. If PPWI cannot operate its clinics under this equitable payment model, then they can seek private funding.

By PPWI’s own admission the bill’s enactment would be “clinic closing,” cutting their annual public subsidy by approximately \$4.5 million. So be it. Organizations that perform or refer for abortion should be excluded from any and all public funding. All money is fungible. Family planning funds undeniably free up resources within receiving organizations, like PPWI, to engage in the surgical abortion business. Poll after poll demonstrates that Americans strongly oppose the use of taxpayer funds for abortion.

Thank you for your consideration, and I am happy to answer any questions committee members may have for me.