

# Bill as Introduced

SB 171 - AS INTRODUCED

2011 SESSION

11-0969

01/09

SENATE BILL        **171**

AN ACT            relative to prescription drug benefits for the treatment of pain.

SPONSORS:        Sen. Carson, Dist 14; Sen. Stiles, Dist 24; Rep. Rosenwald, Hills 22; Rep. Case, Rock 1

COMMITTEE:      Health and Human Services

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ANALYSIS

This bill requires health benefit plans providing prescription drug benefits to provide coverage for a medically necessary drug prescribed for the treatment of pain without requiring the covered person to first use an alternative drug except an appropriate generic brand.

.....

Explanation:     Matter added to current law appears in ***bold italics***.  
                     Matter removed from current law appears [~~in brackets and struckthrough~~].  
                     Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

AN ACT                   relative to prescription drug benefits for the treatment of pain.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Managed Care; Prescription Drugs. Amend RSA 420-J:7-b, II to read as follows:

2           II.(a) Every health benefit plan that provides prescription drug benefits shall maintain an  
3 expeditious exception process, not to exceed 48 hours, by which covered persons may obtain coverage  
4 for a medically necessary nonformulary prescription drug. The exception process shall begin when  
5 the prescribing provider has provided the health benefit plan with the clinical rationale for the  
6 exception.

7           ***(b) Every health benefit plan that provides prescription drug benefits shall***  
8 ***provide coverage for a medically necessary drug prescribed for the treatment of pain***  
9 ***without requiring the covered person to first use an alternative drug to the one prescribed***  
10 ***except a generic brand equivalent of the prescribed drug.***

11          2 Effective Date. This act shall take effect 60 days after its passage.

SB 171 - AS AMENDED BY THE SENATE

03/23/11 0795s

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SENATE BILL **171**

AN ACT relative to prescription drug benefits for the treatment of pain.

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COMMITTEE: Health and Human Services

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AMENDED ANALYSIS

This bill requires health benefit plans providing prescription drug benefits to provide an exception process which shall not take more than 24 hours for coverage for a medically necessary drug prescribed for the treatment of pain.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 171 - AS AMENDED BY THE SENATE

03/23/11 0795s

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1 1 Managed Care; Prescription Drugs. Amend RSA 420-J:7-b, II to read as follows:

2 II. Every health benefit plan that provides prescription drug benefits shall maintain an  
3 expeditious exception process, not to exceed 48 hours, by which covered persons may obtain coverage  
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5 ***formulary or nonformulary drug prescribed for the treatment of pain, the exception process***  
6 ***shall not exceed 24 hours.*** The exception process shall begin when the prescribing provider has  
7 provided the health benefit plan with the clinical rationale for the exception.

8 2 Effective Date. This act shall take effect 60 days after its passage.

# Amendments

Health and Human Services  
March 10, 2011  
2011-0795s  
01/09

Amendment to SB 171

1 Amend RSA 420-J:7-b, II as inserted by section 1 of the bill by replacing it with the following:

2

3 II. Every health benefit plan that provides prescription drug benefits shall maintain an  
4 expeditious exception process, not to exceed 48 hours, by which covered persons may obtain coverage  
5 for a medically necessary nonformulary prescription drug. *In the case of a medically necessary*  
6 *formulary or nonformulary drug prescribed for the treatment of pain, the exception*  
7 *process shall not exceed 24 hours.* The exception process shall begin when the prescribing  
8 provider has provided the health benefit plan with the clinical rationale for the exception.

2011-0795s

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This bill requires health benefit plans providing prescription drug benefits to provide an exception process which shall not take more than 24 hours for coverage for a medically necessary drug prescribed for the treatment of pain.



# Committee Minutes

**SENATE CALENDAR NOTICE  
HEALTH AND HUMAN SERVICES**

Senator Jeb Bradley Chairman  
 Senator Tom De Blois V Chairman  
 Senator Molly Kelly  
 Senator Gary Lambert  
 Senator Andy Sanborn

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
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<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: February 3, 2011**

**HEARINGS**

**Thursday**

**2/10/2011**

**HEALTH AND HUMAN SERVICES**

**LOB 102**

**1:00 PM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

1:00 PM SB164  
 1:20 PM SB72-FN  
 1:40 PM SB122  
 2:00 PM SB171

relative to the personal needs allowance of residents of nursing homes.  
 establishing a comprehensive cancer plan fund.  
 establishing a committee to study the laws relating to electronic prescriptions.  
 relative to prescription drug benefits for the treatment of pain.

**Sponsors:**

**SB164**

Sen. Sylvia Larsen  
 Rep. Robert Williams

Sen. Molly Kelly  
 Rep. Mary Gile

Sen. Amanda Merrill  
 Rep. James Pilliod

Sen. Matthew Houde  
 Rep. James MacKay

**SB72-FN**

Sen. Molly Kelly

**SB122**

Sen. Nancy Stiles

Sen. Andy Sanborn

Rep. Rich DiPentima

Rep. Frank Case

**SB171**

Sen. Sharon Carson

Sen. Nancy Stiles

Rep. Cindy Rosenwald

Rep. Frank Case

Robyn Dangora 271-7585

Sen. Jeb Bradley

Chairman

# Health and Human Services Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Robyn Dangora, Legislative Aide

**RE:** Hearing report on SB 171 – relative to **prescription drug benefits for the treatment of pain.**

**HEARING DATE:** February 10, 2011

**MEMBERS OF THE COMMITTEE PRESENT:** Senator Bradley,  
Senator Kelly, Senator Lambert, Senator Sanborn

**MEMBERS OF THE COMMITTEE ABSENT:** Senator De Blois

**Sponsor(s):** Sen. Carson, Dist 14; Sen. Stiles, Dist 24; Rep. Rosenwald,  
Hills 22; Rep. Case, Rock 1

**What the bill does:** This bill requires health benefit plans providing prescription drug benefits to provide coverage for a medically necessary drug prescribed for the treatment of pain without requiring the covered person to first use an alternative drug except an appropriate generic brand.

**Who supports the bill:** Sen. Carson, Dist 14; Sen. Stiles, Dist 24; Rep. DiPentima, Rock. 16, Mark Vatler, ance Plans; Paul Gileno, U.S. Pain; Jim Demers, Pfizer, Inc.

**Who opposes the bill:** Andy Friedell, Medco; Paula Rogers, Anthem Blue Cross/Blue Shield; Ed Dupont, Harvard Pilgrim

**Summary of testimony received:**

*Hearing opened at 2:11 PM*

**Senator Sharon M. Carson, D. 14:** Prime Sponsor

- Many health benefit providers require patients to use an alternative drug than the one specifically requested by their doctor.
- Many times a “step process” is used, which allows the insurer to require usually 2 failures of a drug before the specific drug requested by the physician is dispensed.

- In terms of pain medication, this could have a serious impact on the patient's wellbeing.
- This bill will only allow for the bypassing of the step process when a physician determines that a specific drug is "medically necessary," as defined by RSA 420-J:3.
- To further ensure economic value, SB 171 allows for the dispensing of the comparable generic brand of a drug.
- Patients will likely save money as a result of this bill because they will only pay one prescription co-pay, for the most effective drug, rather than multiple co-pays for failed drugs. This could result in hundreds of dollars savings.
- This bill could also help prevent drug diversion.
- The collection of unused prescription drugs in homes, especially pain medication is a serious problem; these drugs can end up in the hands of family members, including children.
- Many pain medications are powerful opioids and by eliminating the unnecessary prescribing of these drugs will go a long way to control the illegal access and use of pain medication.
- In the House, HB 71 is an effort to create a local drug take-back program to get unused drugs out of homes and avoid misused and abuse. SB 171 will be another tool to battling the problem of drug diversion while also giving medical assistance and economic relief to the patients in need of pain medication in New Hampshire .

#### **Senator Nancy F. Stiles, D. 24**

- Co-sponsor, SB 171 will help New Hampshire residents who suffer from severe pain to get better and faster access to the medications their doctors believe is medically necessary.
- Senator Carson mentioned HB 71. That bill is the result of a year's worth of work by the House Commerce & Consumer Affairs committee and has the support of all types of stakeholders from the environmental community to law enforcement.
- SB 171 will be another important step, along with HB 71, in preventing illegal access to powerful pain medications, by eliminating the collection of unused drugs that result from insurance provider requirements that patients must try 2 or 3 alternative drugs that fail before actually getting the medication prescribed by their doctor.
- A September 17 article from the *Nashua Telegraph* reports that one in five New Hampshire teens say they have abused prescription drugs at least once; one of the most common drugs being pain relievers.
- SB 171 will not only be positive for the patients, but it will also help to limit the improper access to unused drugs.
- Senator Kelly asked: Have you had conversations as to why there is a process of using one or two other drugs before the one prescribed?

-Response: I have not had that conversation, but I believe others who will testify can speak to that.

#### **Paul Gileno, Founder, U.S. Pain**

- In support, as a pain survivor, Mr. Gileno founded U.S. Pain for and by pain survivors

- In 2004, Mr. Gileno was diagnosed with Failed Back Syndrome and Reflex Sympathetic Dystrophy, which is a chronic, painful, and progressive neurological condition that affects the body.
  - The Foundation is dedicated to building, supporting, empowering and educating groups of people with all forms of pain disorders, which encompass Fibromyalgia, Multiple Sclerosis, Arthritis, Diabetic Neuropathy, Cancer, and many other disorders.
  - The US Pain Foundation's 25,000+ advocates and pain survivors throughout the country – 500 of those whom are New Hampshire residents, support SB 171
  - Two issues of concern for the US Pain constituency are escalating out-of-pocket costs and restricted access to medications due to insurer step therapy policies.
  - While the goal of step therapy policies for the insurer may seem to make sense to control costs, the practical reality for people with pain is often very different. Step therapy policies can actually result in increased healthcare costs and often requires patients to endure monetary, physical and psychological distress.
    - Patients are required to fail numerous other treatment options before the insurer will grant them access to the treatment option that was originally prescribed by the patient's physician, resulting in escalating out-of-pocket costs, debilitating conditions, and fear and frustration.
  - The annual cost of chronic pain in the US including healthcare expense, lost income and lost productivity is estimated to be \$100 billion. When access is denied or modified, patients risk incurring irreversible damage and mobility loss that will negate these long-term savings posed by step therapy.
  - Step therapy, a utilization management tool for insurers, leads to the accumulation of unused medicines in home medicine cabinets.
    - Studies show that over eighty percent of abused prescriptions come from the medicine cabinets of loved ones who fail to properly safeguard or dispose of used medication that was validly prescribed to them.
  - Pain management is the number one cause of adult disability in the United States, but it is becoming an increasingly controllable disease; it is important to continue trending in a positive direction.
  - Pain sufferers face emotional, financial, personal, and societal costs.
  - U.S. Pain asks that insurance companies remove roadblocks and obstacles that prevent people with pain from receiving the appropriate and necessary pain management and treatment options they are prescribed.
- Paula Rogers, Anthem Blue Cross/Blue Shield**
- In opposition, Anthem uses Express Scripts for prior authorization for certain medication
    - Prior authorization is used to control costs and address clinical issues
  - They seek to minimize costs where appropriate while addressing medically necessary provision of pharmaceuticals
  - Research indicated this type of legislation had been introduced in several other states and passed in at least one.

- The concern is to pass something that aggressively states there will be no step therapy when addressing pain medication
  - Anthem believes physicians should be prescribing the most effective, but least aggressive medication possible.
- Appeal procedures exist when physicians take issue with the prescribing of other less aggressive medications, but Ms. Rogers has not seen complaints in New Hampshire.
  - There is not enough evidence that people are being denied medically necessary medication in New Hampshire.
  - There is no internal pressure felt at Anthem regarding the issue.
- Before you move forward with legislation, the exact problems in New Hampshire should be articulated.
- Senator Kelly asked: To clarify, physician should be exploring less aggressive medications, what is meant by that?
  - Response: Physicians should not be jumping to a narcotic when less aggressive options are available. There are many options available before someone would reach the need of a serious class 2 narcotic for example.
- Senator Sanborn asked: At what point does the insurance industry rely on the knowledge of the patient's physician?
  - Response: If a patient has a prior history of medication use then they enter a prior approval status. The insurer needs to be part of the system to address costs. She is not aware of complaints on this issue within Anthem. In some self-funded programs, this legislation may not be addressed.
- Senator Bradley asked: To summarize, your concerns are cost issues, clinical issues of prescribing, and you do not think there is a significant problem at this time?
  - Response: Yes. I have not heard of complaints regarding this issue and generally complaints are brought to the forefront and addressed promptly.

#### **Andy Friedell, Medco**

- In opposition, Medco is hired by entities such as large employers, unions, health plans, and private sector groups to improve quality and affordability to their drug benefits.
- Medco believes this legislation may increase costs, discourage some plans from covering certain drugs, and pose safety issues.
- In order to stretch the money in the health plans of the entities that hire Medco, they create formularies—lists of similar drugs covered by the plan.
  - The formularies are sometimes tiered with a lesser co-pay for generic brands
  - Clinical issues are the first addressed when creating formularies.
- The pharmacy and therapeutics committee, made up of outside experts, consider all issues of safety and efficiency to address each drug that are considered for inclusion in a formulary.
- Drugs are placed into one of three lists:
  - (1) Must be added to a formulary—new and no other options

- (2) Must not be added to a formulary—deemed dangerous
- (3) may be added to a formulary—the largest group. The business members of Medco then try to bargain with providers
- At this point some providers create step therapy programs. Step therapy programs are approved by the pharmacy and therapeutics committee.
  - Drugs within a group have therapeutic interchangeability
  - The goal is for patients to try the lowest cost alternative first
- At Medco, a patient in a step therapy plan would have to try one preferred option before that prescribed.
  - This encourages the use of the most cost effective drug.
  - The groups of drugs are narrow, for example, Migraine medications are one group and GI drugs are in another.
- There are three groups for pain medication—non-steroidal, migraine, and thenitil, which the FDA warns should only be used for patients with a tolerance to opioids
- These plans are mainly used by small providers and will disproportionately affect small employers
- Senator Kelly asked: Could you please explain who creates formularies?
  - Response: The PTC, or pharmaceutical and therapeutic committee is made up of physician academics and other experts in the field
- Senator Lambert asked: Is there a specific period of time that a patient must take the alternative drug before they may receive the non-preferred drug prescribed?
  - Response: That would depend on the provider, it is their discretion.
- Senator Bradley asked: So it could be as little as several days?
  - Response: Yes, if that is what the provider agrees to.

### **Jim Demers, Pfizer, Inc**

- In support, the bill is written so patients may avoid step process only if it is “medically necessary,” which is legally defined. Not all drugs would avoid the step process.
  - Physicians know this definition and how to use it.
- Pfizer does not support this bill only in order to sell more drugs because the bill allows for the generic equivalent.
- A medical profession that recently made an inquiry at Anthem was told that their step therapy process is a 2-step process.
- In a personal experience, Mr. Demers waited 4 weeks trying to obtain the drug prescribed, went through an appeals process with the insurance company and eventually paid for the drug out of pocket.
  - This is often the insurers’ goal, to avoid paying for the non-preferred medication.
- Drug diversion is another important issue this legislation addresses.
  - The *Nashua Telegraph* article that Sen. Stiles discussed a Seabrook family that lost their child because of unused pain medication left in the cabinet
- Discussions regarding which drug to take should be had with the patient’s physician.

*Hearing closed at 2:50 PM*

**Funding:** N/A

**Future Action:** Pending

**RMD**

[file: SB 171 report]

Date: 2/14/11



# Speakers



# Testimony

Friday, September 17, 2010

## State-run website targets drug abuse

By MICHAEL BRINDLEY

Staff Writer, Nashua Telegraph

CONCORD – One in five teens in New Hampshire say they have abused prescription drugs at least once, a trend that has led New Hampshire to create a guide for parents about medications most likely to be misused by their children.

The state on Thursday launched a website, drugfreeNH.org, with information about pain relievers, stimulants and anti-depressants.

It also provides information about alcohol and marijuana, which are still the drugs of choice among teens, according to the 2009 Youth Risk Behavior Survey of New Hampshire school students.

That survey also showed 20.4 percent of students reported having taken a prescription drug, such as Xanax, OxyContin or Ritalin, at least once without a prescription. That statistic is in line with the results from a national survey.

It was the first time the state had asked teens about their abuse of prescription drugs in the survey, given to high school students every other year. At a press conference Thursday, officials who worked on designing the site said prescription drug abuse is a growing problem that needs to be addressed.

“Misuse of prescription medications can have really tragic consequences, not only for the individuals using them but for families and communities,” said Dr. Seddon Savage, director of the Dartmouth Center on Addiction, Recovery and Education.

Savage was one of the speakers during the press conference, held in the State House. The “One in Five” slogan is part of the marketing campaign for the site, meant to focus on the growing problem of prescription drug abuse.

“It’s a daunting statistic,” said Joe Harding, director of the Department of Health and Human Services’ Bureau of Drug and Alcohol Services. It’s not just a problem among teens, Harding said. Last year, more citizens died from prescription drug overdoses -- 164 -- than in car accidents -- 110.

The website was developed by the Department of Health and Human Services’ Bureau of Drug and Alcohol Services and the Governor’s Commission on Alcohol and Drug Abuse Prevention.

At the press conference, Charles Rosa of Seabrook spoke about his family's loss as a result of prescription drugs. He has lost two of his six children to drug overdoses. His two oldest sons died of overdoses of heroin and a fentanyl patch.

Rosa is a mixed martial arts trainer and was prescribed a painkiller after suffering an injury. One of his sons began stealing them, leading to his addiction to heroin.

Rosa said he lives with the guilt, wishing he had done more to prevent his sons from getting involved in drugs. He now speaks at schools and events around the state, raising awareness for prevention of prescription drug abuse.

"I miss my boys," he said. "I hope this helps people and families because this stuff is no joke."

Starting in the fall, 10 regional networks will host "One in Five" events to raise awareness about the website and facts and information about how to prevent prescription drug abuse.

Bill Hughen, director of guidance at Alvirne High School in Hudson, said Thursday that while prescription drug abuse isn't as prevalent as some other drugs, it's an issue the school is taking seriously.

"The tough part with prescription drugs is that they're so out there in the community," Hughen said. "There are people who have legitimate medical issues and somehow these drugs turn up in the hands of students."

Among the recommendations for prevention on the site is for parents to keep their medicine cabinets locked. But Hughen said often it is the students to whom the medications are prescribed. Many students are prescribed painkillers for injuries or Ritalin or Concerta for Attention Deficit Disorders, he said.

"They could they take them and sell them to friends," Hughen said. "That has happened on some occasions."

Another problem in dealing with prescription drugs is that their use is so difficult to detect. Unlike with alcohol or marijuana, there are no smells associated with the drugs. Students could be abusing them without anyone ever knowing, Hughen said.

By comparison, the abuse of prescription drugs is still well below the use of alcohol and marijuana. In the 2009 survey, 68.5 percent of teens reported having had alcohol at least once; 40.5 percent reported having tried marijuana at least once.

The website launched Thursday includes different areas for teens and parents. For teens, there are tips for how to deal with peer pressure, as well as myths and realities of different drugs. There are also links for where to get help and how to recover from addiction.

Michael Brindley can be reached at 594-6426 or [mbrindley@nashuatelegraph.com](mailto:mbrindley@nashuatelegraph.com).

Complete Document

Can Be Viewed

In Bill Folder



# V I S I B L E P R O J E C T

[WWW.INVISIBLEPROJECT.ORG](http://WWW.INVISIBLEPROJECT.ORG)

2010

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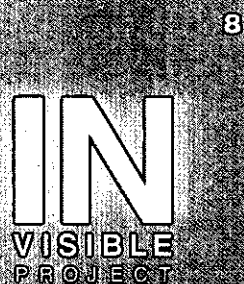
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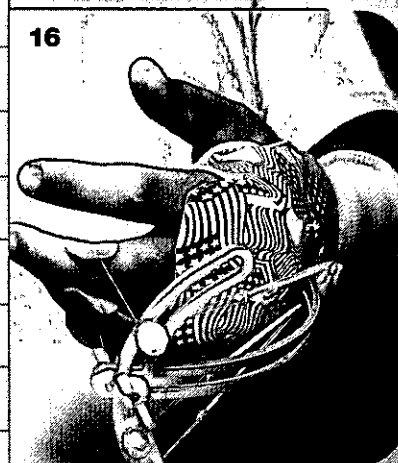
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# richard rauck

The staff at *PainPathways* magazine is proud to support the *INvisible Project*.

Its unique artistic and educational mission captured our creative spirit at first mention, and what a powerful result.

In my years of publishing and decades of practice and training pain physicians, I have seen the importance of words and images, and the power they have to inspire and heal. Through *PainPathways*, we have the opportunity to explore the feelings many people in pain experience — fear, doubt, anxiety, depression, confusion — often because their symptoms are misunderstood by families, friends, co-workers and even health care providers.

We have been privileged to witness the immense relief and strong connection people find when they learn that others have been in their shoes. They become visible, validated. What an uplifting and sometimes surprising discovery! Many of our readers describe finding the magazine and feeling as if they were reading their own story in its pages. They think they must struggle alone and unseen, but they could not be more wrong. We hope that, through the *INvisible Project*, they will see themselves and find the inspiration they need to continue the journey to their best possible health and well-being.

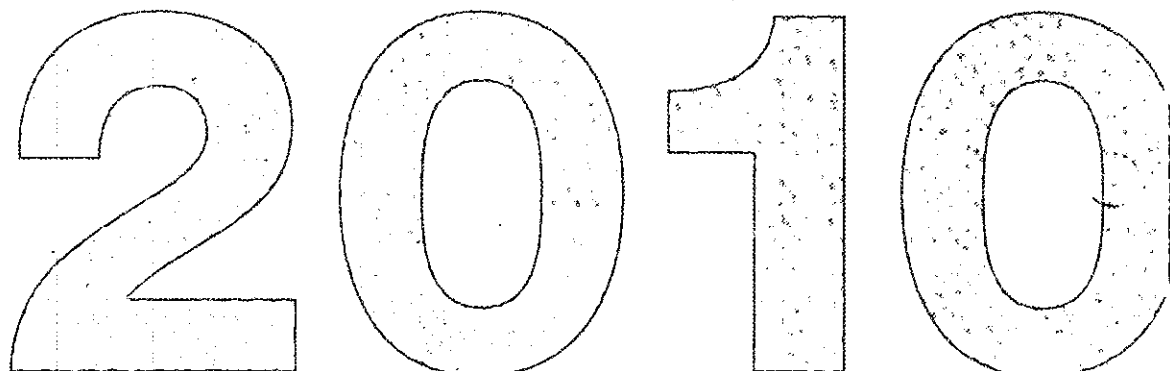
We are honored to partner with the *INvisible Project* to raise awareness and make visible those who feel unseen. We applaud the mission, passion and courage of its creators and participants, whose honest words and moving images will inspire hope and promote understanding through this book and soon around the nation.

Richard L. Rauck, MD

EDITOR-IN-CHIEF, *PAINPATHWAYS* MAGAZINE

DIRECTOR, PAIN MANAGEMENT FELLOWSHIP,  
WAKE FOREST UNIVERSITY BAPTIST MEDICAL CENTER

PRESIDENT, CAROLINAS PAIN INSTITUTE  
AND CENTER FOR CLINICAL RESEARCH  
WINSTON-SALEM, NORTH CAROLINA



2010



## **Position Statement on the Impact of Step Therapy for Pain Management**

The US Pain Foundation is concerned about the impact of insurer use of step therapy for pain management. While the goal of this policy makes sense to control costs, the practical reality for people with pain is often different. Step therapy policies can result in increased healthcare costs and often requires patients to endure monetary, physical and psychological distress. The Foundation receives many letters, complaints, and calls for help from the pain community. Below is some background on step therapy and our position:

- ***Step Therapy for Pain Management*** -- Requires alternate medications, which in some cases includes over the counter medication, be taken before the physician recommended medication is approved for reimbursement. Patients are required to fail numerous other treatment options before the insurer will grant the patient access to the treatment option that was originally prescribed by the patient's physician. This protocol is used as a cost-saving measure for the insurer; however, step therapy policies may lead to increased costs and the accumulation of unused medicines in home medicine cabinets. Step Therapy often sets the stage for forced "off-label" use of medications that may no longer be appropriate nor provide optimal efficacy for an individual's medical condition. In the long run, this policy can actually increase costs for the insurer because creating a delay in care can increase resistance to treatment or cause other health complications.

According to the National Center for Health Statistics, 76.5 million Americans report pain lasting at least 24 hours. The US Pain Foundation believes a person with pain deserves as many options and treatments that are available to help improve their life with pain. We recognize that insurance companies are trying to control costs and avoid unnecessary medical interventions, but we must support a physician's judgment in their patient's care. The US Pain Foundation supports the American Medical Association's official statement on this issue:

*...[T]he AMA accepts the concept of therapeutic interchange; i.e., the authorized exchange of therapeutic alternates in accordance with previously established and medical staff-approved written guidelines or protocols, within a drug formulary system. ...[T]he AMA clearly differentiates therapeutic interchange from therapeutic substitution; i.e. the act of dispensing a therapeutic alternate for the drug product prescribed without prior authorization of the prescriber, and reaffirms its strong opposition to therapeutic substitution in any patient care setting.<sup>1</sup>*



It is essential that pain survivors receive the drug treatment prescribed by their physicians and do not suffer needless consequences due to step therapy policies for pain management. Unfortunately, in too many cases, patients are forced to: pay cost-sharing for the first steps of therapy and for additional medical visits; suffer physically because effective treatment is delayed; and tolerate side effects from inadequate medicines. The US Pain Foundation finds these insurer policies unacceptable and endorses legislative and regulatory policies that put prescribing power back in the hands of physicians in charge of a patient's care. We ask that insurance companies remove roadblocks and obstacles that prevent people with pain from receiving the appropriate and necessary pain management and treatment options they are prescribed.

US Pain Foundation is an independent nonprofit 501(c) 3 organization created by people with pain for people with pain through support, education, advocacy, empowerment and connecting.

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1 Council on Scientific Affairs, "Impact of Drug Formularies and Therapeutic Interchange on Health Outcomes," American Medical Association Report, 2004.

[info@uspainfoundation.org](mailto:info@uspainfoundation.org)  
[www.uspainfoundation.org](http://www.uspainfoundation.org)

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Shelton, CT 06484

MEMORANDUM

TO: Senate Health and Human Services Committee  
FROM: Edward C. Dupont, for Harvard Pilgrim Health Care  
RE: SB 171 - relative to prescription drug benefits for the treatment of pain  
DATE: February 10, 2011

Harvard Pilgrim Health Care wishes to be recorded in opposition to SB 171. We believe this bill hurts good medical practice; is unnecessary, given the process Harvard Pilgrim has in place for prescribing physicians to show why a particular drug is necessary; and encourages the wrong financial incentives.

1. NH defines medically necessary care in the Managed Care statute (RSA 420-J) as care that is:
  - (a) Consistent with generally accepted standards of medical practice;
  - (b) Clinically appropriate in terms of type, frequency, extent, site, and duration;
  - (c) Demonstrated through scientific evidence to be effective in improving health outcomes;
  - (d) Representative of "best practices" in the medical profession; and
  - (e) Not primarily for the convenience of the enrollee or physician or other health care provider.

While Harvard Pilgrim generally covers prescriptions that a treating physician writes for his or her patient, there are instances where best practices or scientific evidence indicate that a different prescription drug or a lower dosage should first be tried. This protects the patient from potentially serious side effects as well as unnecessary costs. To encourage the appropriate prescribing of medications, Harvard Pilgrim uses an approach called Step Therapy. Basically, this process looks at the member's medical profile and the drug being prescribed to see if the treatment is consistent with the medical condition. If the member's medical condition indicates that a first-level treatment drug should be tried rather than the prescribed drug, prior authorization for the prescribed drug will be required.

2. Harvard Pilgrim also has a process in place on its Provider website where providers can see which drugs trigger a step therapy approach and how to request an exception if they believe a first line drug is not appropriate for their particular patient. Physicians are not automatically prevented from prescribing a higher dosage prescription if they can explain why this is medically necessary for their patient. We want to note that Harvard Pilgrim does not use a step therapy approach with pain medications, although we may have other flags if, for example, an unusually high amount of pain medication is ordered. Physicians still have the ability in this case to explain why the dosage or particular pain medication is medically necessary and receive authorization for their prescription.

3. As a final point, we want to note that medical treatment should provide good value to the member. This means that Harvard Pilgrim, like other health plans, promotes the most cost-effective first line therapy for all members that provides similar therapeutic effects when

compared with a more costly brand name drug or a higher dosage drug than is necessary. Once a patient starts on a more costly brand name or generic drug, and there is no medical indication that an alternative drug shouldn't be tried, it becomes very difficult to move them to a more appropriate medication in the future. A blanket prohibition on the use of appropriate alternative treatment drugs will only increase premium costs and members' share of those costs in the long run.

Thank you for this opportunity to provide these comments to the Committee.

**Statement of Senator Sharon Carson**  
**February 10, 2011**  
**Before the Senate Health & Human Services Committee**  
**SB 171 relative to prescription drug benefits for the treatment of pain**

Thank you Mr. Chairman.

I am here today to introduce Senate Bill 171 which would require health benefit plans providing prescription drug benefits to provide coverage for a "medically necessary" drug prescribed for the treatment of pain without requiring the covered person to first use an alternative drug except an appropriate generic brand.

As some of you are probably aware, many health benefits providers require patients to use an alternative drug when a specific one is requested by a doctor and it is not uncommon for a "step process" to be used which in many instances allows the insurer to require usually 2 failures of a drug, but in some cases even more, before the actual specific drug requested by the doctor is dispensed. In the case of pain medication, this approach can have a serious impact on the patient's wellbeing—as you can imagine, a patient could spend weeks using an ineffective pain medication before finally getting the one desired by the doctor. As a condition of this bill, bypassing the multi-step approach could only be used in those limited instances where the doctor determines the specific drug is "medically necessary." Under current law, the term "medically necessary" is clearly defined in RSA 420-J:3 to mean "health care services or products provided to an enrollee for the purpose of preventing, stabilizing, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease in a manner that is:

- (a) Consistent with generally accepted standards of medical practice;
- (b) Clinically appropriate in terms of type, frequency, extent, site, and duration;
- (c) Demonstrated through scientific evidence to be effective in improving health outcomes;
- (d) Representative of "best practices" in the medical profession; and
- (e) Not primarily for the convenience of the enrollee or physician or other health care provider.

By using that definition and set of standards, this bill limits when this provision can actually be implemented. And to further ensure economic value, SB171 allows for the comparable generic brand to be dispensed.

Not only will this legislation give better and more immediate medical relief to patients suffering from severe pain, it is likely to save money as well. Patients impacted by this law will only have to pay one prescription co-pay—the co-pay for the most effective drug, rather than additional co-pays for the drugs that fail before getting the appropriate one. Depending on an insured's co-pay amount, in many instances this could save hundreds of dollars for NH consumers and pain patients.

Finally, drug diversion is a very big problem today. Keeping unused prescription drugs out of the hands of family members, especially kids, is a growing problem across the country. One of the contributing aspects of this problem is the collection of unused prescription drugs in home medicine cabinets. And think about this, pain medications are the very drugs that are the motivation for this type of behavior. Many prescribed pain medications are powerful opioid based drugs—the very drugs none of us want in the hands of our children. By eliminating the unnecessary prescribing of these type drugs that might fail and thereby end up in the cabinet, will go a long way to control the illegal access and use of pain medications.

The House is near wrapping up work on HB71, which authorizes local drug take-back programs in an effort to get unused drugs out of homes to avoid misuse and abuse, not to mention expanding for the safe disposal to address environmental issues. Proper disposal is an important step in protecting our families and children from improper access and use of unused prescription drugs. This bill before you today, SB171, will be one more tool in battling this growing problem while giving both medical assistance and economic benefit to the patients in need of pain medication in New Hampshire. And therefore, I urge your support of this measure.

**Statement of Senator Nancy Stiles  
Before the Senate Health & Human Services Committee  
February 10, 2011**

**SB 171 relative to prescription drug benefits for the treatment of pain**

Good afternoon Mr. Chairman.

I am pleased to lend my support to Senate Bill 171.

There is no doubt in my mind this bill will help New Hampshire residents who suffer from severe pain to get better and faster access to the medications their doctors believes is medically necessary but today I want to focus on one other significant aspect that this bill addresses.

The House is near completion of work on House Bill 71, a bill that I am pleased to cosponsor. This measure enables local communities to establish drug take-back programs which are an important step in getting unused prescription drugs out of household medicine cabinets to be properly disposed of. It is a bill that the House Commerce & Consumer Affairs Committee worked on for over a year and the final product has the support of all types of stakeholders from the environmental community to law enforcement.

The bill before you today, Senate Bill 171, is another important piece to help prevent illegal access to powerful pain medications by eliminating the collection of unused drugs because of requirements by some insurance providers that patients must try two or three alternative drugs that fail before actually getting the pain medication prescribed by the doctor. As you can imagine, each bottle of pain medication that fails, ends up in the patient's medicine cabinet and becomes the potential target of abuse by a family member.

I will leave with you a copy of a September 17<sup>th</sup> news article on this topic from the Nashua Telegraph but I want to make one major point this article reports -- "one in five teens in New Hampshire say they have abused prescription drugs at least once." And one of the most commons drugs that gets abused are pain relievers. This is a staggering and concerning statistic that must be addressed.

So enactment of SB 171 will go a long way to limit the number of unused prescribed pain medications—the result will be good for the patients but it will also help curb improper access to these unused drugs. That will help New Hampshire families further protect their children from drugs abuse and the tragic consequences that come with that abuse.





Good afternoon. My name is Paul Gileno, President and Founder of the US Pain Foundation. I am here today to support passage of SB 171. I am a pain survivor myself, so I can truly say to you that the Foundation was founded by people with pain for people with pain. In 2004, I was diagnosed with Failed Back Syndrome and Reflex Sympathetic Dystrophy, also called complex regional pain syndrome, which is a chronic, painful, and progressive neurological condition that affects my body. Trained as a chef, I owned and operated a gourmet food store and an off-premise catering business. At the age of 30, I broke the bottom of my spine at work, and since then my life has been flipped upside down. Through my work with the Foundation, we are dedicated to building, supporting, empowering and educating groups of people with all forms of pain disorders. I'd like to clarify that when I say pain that encompasses Fibromyalgia, Multiple Sclerosis, Arthritis, Diabetic Neuropathy, Cancer, and many other disorders.

I'm speaking to you today in support of SB 171 on behalf of the US Pain Foundation's 25,000+ advocates and pain survivors throughout the country – 500 of those whom are New Hampshire residents. Collectively, we advocate for the millions of people living with chronic pain throughout the United States. Two issues of concern for our constituency are escalating out-of-pockets costs and restricted access to medications due to insurer step therapy policies. Although it might seem at first that the two concerns are mutually exclusive, in the case of people with various pain disorders, and especially in the case of those taking biologics, they are remarkably complimentary.

While the goal of step therapy policies for the insurer may seem to make sense to control costs, the practical reality for people with pain is often very different. Step therapy policies can actually result in increased healthcare costs and often requires patients to endure monetary, physical and psychological distress. Patients, like me, are required to fail numerous other treatment options before the insurer will grant the patient access to the treatment option that was originally prescribed by the patient's physician. For me, and the 500 pain survivors in New Hampshire that I represent today, this translates into escalating out-of-pocket costs, debilitating conditions, and fear and frustration. The annual cost of chronic pain in the US including healthcare expense, lost income and lost productivity is estimated to be \$100 billion. When access is denied or modified, patients risk incurring irreversible damage and mobility loss that will negate these long-term savings posed by step therapy. Do we want to live in a society where lowering costs will directly affect a person's health and ability to have an acceptable quality of life?



Unfortunately, step therapy policies also open the door to our Generation X'ers. Step therapy, a utilization management tool for insurers, leads to the accumulation of unused medicines in home medicine cabinets. Our medicine cabinets, your medicine cabinets, are the number one source for prescription drug abuse among our youth. Studies show that over eighty percent of abused prescriptions come from the medicine cabinets of loved ones who fail to properly safeguard or dispose of used medication that was validly prescribed to them.

Pain management has emerged as a devastating public health problem. It is the number one cause of adult disability in the United States. However, in the past ten years, pain has been transformed from a debilitating disease to a controllable chronic one. The result, made possible by better therapeutic treatments, has increased productivity in the workplace, and created better family and personal lives. Continuing this positive trend is dependent on patients being able to receive the proper drugs in the proper doses, and receiving them in a timely manner.

In closing, I'd like to reiterate that that is essential that pain survivors receive the drug treatment prescribed by their physicians and do not suffer needless consequences due to step therapy policies for pain management. As a pain sufferer, I had to speak up today. The costs of pain -- emotionally and financially, personally and societal -- are simply too high to ignore. Unfortunately, in too many cases, patients are forced to: pay cost-sharing for the first steps of therapy and for additional medical visits; suffer physically because effective treatment is delayed; and tolerate side effects from inadequate medicines. The US Pain Foundation finds these insurer policies unacceptable and endorses legislative and regulatory policies that put prescribing power back in the hands of physicians in charge of a patient's care. We ask that insurance companies remove roadblocks and obstacles that prevent people with pain from receiving the appropriate and necessary pain management and treatment options they are prescribed.

Thank you,

Paul Gileno  
President  
US Pain Foundation

[info@uspainfoundation.org](mailto:info@uspainfoundation.org)  
[www.uspainfoundation.org](http://www.uspainfoundation.org)

Main: (800) 910.2462  
Fax: (800) 929 -4062

P.O. Box 2182  
Shelton, CT 06484



Chairman Jeb Bradley  
New Hampshire Statehouse  
107 N. Main St.; Room 302  
Concord, NH 03301

08 Feb 2011

Dear Chairman Bradley,

I am a pain advocate who represents U.S. Pain Foundation as a US Pain Ambassador. I have lived with chronic pain for over 20 years.

According to the CDC, some 76 million Americans live with chronic pain. Chronic pain is described as lasting more than 3 months. As an elected leader, you are faced with many health-related legislative issues regarding people that live with pain. On Thursday, Feb. 11, 2011, you and the NH Statehouse Leaders will be voting on SB 171, a Senate Bill on Step Therapy.

I would appreciate your support on this important bill. Chronic pain patients go through many hurdles just to receive and pay for medications. I think your support of this bill will allow better care for those in New Hampshire that live with pain and need medications.

My wish is that you continue to make the health and wellness of those who live in New Hampshire a priority. Thank you for your service to the citizens of your community.

Sincerely,

Lisa Avery

Pain Ambassador of U.S. Pain Foundation  
1870 Bay Street  
Taunton, MA 02780



Chairman Jeb Bradley  
New Hampshire Statehouse  
107 N. Main St.; Room 302  
Concord, NH 03301

08 Feb 2011

Dear Chairman Bradley,

I am a pain advocate who represents U.S. Pain Foundation as a Volunteer Coordinator. I have lived with chronic pain for over 30 years.

According to the CDC, some 76 million Americans live with chronic pain. Chronic pain is described as lasting more than 3 months. As an elected leader, you are faced with many health-related legislative issues regarding people that live with pain. On Thursday, Feb. 11, 2011, you and the NH Statehouse Leaders will be voting on SB 171, a Senate Bill on Step Therapy.

I would appreciate your support on this important bill. Chronic pain patients go through many hurdles just to receive and pay for medications. I think your support of this bill will allow better care for those in New Hampshire that live with pain and need medications.

My wish is that you continue to make the health and wellness of those who live in New Hampshire a priority. Thank you for your service to the citizens of your community.

Sincerely,

Dee Delezene Browers, MSCP, NCC, LPC

Volunteer Coordinator of U.S. Pain Foundation  
3416 Winterwood Dr.  
Dayton, OH 45424-6613

1-800-910-2462

**Dangora, Robyn**

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**From:** Côte, Marty on behalf of Bradley, Jeb

**Sent:** Friday, February 11, 2011 4:11 PM

**To:** Dangora, Robyn

**Subject:** FW: SB171, Vote Yes!

February 10, 2011

The Honorable Jeb Bradley  
Chair, Health and Human Services Committee

Dear Sir,

My name is Leslie Coggin and I live Alabama. I have suffered from a chronic pain disease called RSD/CRPS. I originally contracted RSD/CRPS by a trauma in my right wrist, at work. I never would have believed that I would say "Thank God for Workman's Comp" but because my disease has moved into Stage four of the disease; meaning all extremities involved, involvement of the major organs (heart, liver, bowel, epidermis e.g.). I am disfigured because of the edema, lymphadema and ulcerating sores on my back, shoulders, sternum and legs. I have depression, anxiety and have been in a wheelchair or bed for the last year.

I am currently 47 years old. I have been married to two great men and because of the monster (RSD/CRPS) I have been divorced twice. It seems that the monster can be almost too much to bear of someone who has to listen to labored breathing, crying and even screams of pain. I was forced to leave work and tried doing other jobs that were less stress and ended up being fired because the opioids, given to me for pain by a doctor, would make me sleep at my desk. I now live in a small garden home, purchased by my family for me, get \$945.00 from disability, depend on Medicare because no other insurance company would touch me and see a multitude of doctors (gastroenterologist, dentist, cardiologist, periodontist, psychologist, pain management, physical therapist, urinary, internist, neurologist, neurosurgeon, pump maintenance, vascular, allergist, dermatologist and pulmonologist).

This disease has been around since the Civil War when it was named Sudek's Atrophy. The monster does not attacks more women than men and until recently was thought to occur only in the mind's of the sufferers. RSD/CRPS is still listed as a "rare disorder" but should not be because it affects men, women and children and can be listed as Reflex Sympathatic Dystrophy, neuralgia, and causalgia. The pain has been listed in the McGill Pain Index as the worst pain beating cancer, childbirth, fractures, and back pain. It feels like someone has opened your body, poured gasoline in it, lit the gas and sewed me back up with the gas burning. I depend on my medications to keep the pain lower so that I can experience life. To date it has been two years since I was able to drive and one year in bed; connected to the outside by my television and radio and visits from my family which includes a number of people from my church. RSD/CRPS has the highest suicide rate of any other disease.

There are not many states that are willing to listen to the rsd/crps sufferers. I am proud of the people and the state of New Hampshire and hope that you will support this important initiative. I am sure that when this bill passes that other states will be encouraged to look at chronic pain a little differently and that reforms will be made.

Thank you for your consideration and please encourage the others on the committee to vote yes!

2/11/2011

--  
Leslie Coggin  
205.902.0111

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: March 10, 2011

THE COMMITTEE ON Health and Human Services  
to which was referred Senate Bill 171

AN ACT                      relative to prescription drug benefits for the treatment of  
pain.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF:    5-0

AMENDMENT # 795s

Senator Gary E. Lambert  
For the Committee

Robyn Dangora 271-7585



## New Hampshire General Court - Bill Status System

**Docket of SB171**

Docket Abbreviations

**Bill Title:** relative to prescription drug benefits for the treatment of pain.*Official Docket of SB171:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/19/2011	S	Introduced and Referred to Health and Human Services, <b>SJ 3</b> , Pg.39
2/3/2011	S	Hearing: 2/10/11, Room 102, LOB, 2:00 p.m.; <b>SC10</b>
3/11/2011	S	Committee Report: Ought to Pass with Amendment #2011-0795s, 3/23/11; <b>SC16</b>
3/23/2011	S	Committee Amendment 0795s, AA, VV; <b>SJ 10</b> , Pg.184
3/23/2011	S	Ought to Pass with Amendment 0795s, MA, VV; OT3rdg; <b>SJ 10</b> , Pg.184
3/23/2011	S	Passed by Third Reading Resolution; <b>SJ 10</b> , Pg.187
3/28/2011	H	Introduced and Referred to Commerce and Consumer Affairs [3/17/2011]; <b>HJ 30</b> , PG.1037
4/12/2011	H	Public Hearing: 4/28/2011 10:30 AM LOB 302 Insurance/Consumer Protection Div ==Work Session May Follow==
5/3/2011	H	==CANCELLED== Subcommittee Work Session: 5/10/2011 11:15 AM LOB 302 Insurance/Consumer Div
5/4/2011	H	==RESCHEDULED== Subcommittee Work Session: 5/10/2011 10:00 AM LOB 308 Insurance/Consumer Div
5/4/2011	H	==CANCELLED== Executive Session: 5/10/2011 11:30 AM LOB 302 ==TIME CHANGE (Orig 1:30 PM)==
5/11/2011	H	Subcommittee Work Session: 5/17/2011 10:15 AM LOB 307 Insurance/Consumer Protection Div
5/11/2011	H	Executive Session: 5/17/2011 1:30 PM LOB 302
5/18/2011	H	Majority Committee Report: Inexpedient to Legislate for May 25 (Vote 13-4; RC); <b>HC 41</b> , PG.1393-1394
5/18/2011	H	Minority Committee Report: Ought to Pass with Amendment #1830h; <b>HC 41</b> , PG.1393-1394
5/18/2011	H	Proposed Minority Committee Amendment #2011-1830h; <b>HC 41</b> , PG.1411
5/25/2011	H	Inexpedient to Legislate: MA VV

NH House

NH Senate

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB 171 ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

HANDOUTS FROM THE PUBLIC HEARING

PREPARED TESTIMONY AND OTHER SUBMISSIONS

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 7955 \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_\_ - AMENDMENT # \_\_\_\_\_ \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED \_\_\_\_\_ AS AMENDED BY THE HOUSE  
\_\_\_\_\_ FINAL VERSION  AS AMENDED BY THE SENATE

\_\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): \_\_\_\_\_

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

8/11/11

Rolyn (Gay Swann)  
BY COMMITTEE AIDE