

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 21, 2016

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Martin, Senators Lakey, Guthrie, Heider, Rice, Thayn, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Patrick** called the meeting to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Martin** moved to approve the Minutes of January 14, 2016. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Chairman Patrick passed the gavel to Vice Chairman Martin to begin hearing the rules.

DOCKET NO. 12-0110-1501 **Rules Pursuant to the Idaho Residential Mortgage Practices Act. Michael Larsen**, Consumer Finance Bureau Chief, Department of Finance (Department), said the proposed rule updates references to incorporated federal laws and regulations (Truth in Lending Act and Regulation Z as well as the Real Estate Settlement Procedures Act and Regulation X) and eliminates duplicative disclosure requirements and unnecessary paperwork for mortgage brokers and lenders. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2015, "Idaho Administrative Bulletin", volume 15-10, pages 183-185. There is no fiscal impact.

Michael Larsen said if approved, the effect of this rule would be to promote consistent, uniform and familiar industry standards in the marketplace by updating references to federal laws and regulations (Truth in Lending Act and Regulation Z as well as the Real Estate Settlement Procedures Act and Regulation X) as amended through January 1, 2016. In 2015 four overlapping mortgage disclosure forms were streamlined into two forms as a part of the federal Truth in Lending Act-Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosure Rule, or Truth in Lending Disclosure (TRID), also known as the "Know Before You Owe Rule." These changes eliminate the need for the disclosures formerly required by Rule 50. Updating references to federal laws and regulations and eliminating redundant mortgage disclosure forms is an effort by the Department to avoid exposing Idaho's mortgage licensees to inconsistencies in federal and state requirements.

This pending rule has the support of the Idaho Mortgage Advisory Board and the Idaho Association of Mortgage Professionals, who said, "the Board of Directors of the Idaho Association of Mortgage Professionals (IAMP) unanimously approved to support the rule changes to the Idaho Mortgage Practices Act." The Department is not aware of any opposition to the pending rule.

MOTION: **Senator Rice** moved to approve **Docket No. 12-0110-1501**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

Board of Professional Engineers and Professional Land Surveyors - Rules of Procedure. **Keith Simila**, Executive Director, Board of Professional Engineers and Professional Land Surveyors (Board), said the need for the rule came about because of law changes made in the last session of the Legislature and the Board's desire to make technical corrections, clarify wording related to basic issues such as various fees required, examination failures, the reinstatement process for retired and expired licenses and to describe basic experience expectations for land surveyors. A temporary rule was implemented on July 1, 2015. The pending rule adopts the provisions of the temporary rule.

In the last legislative session, law changes were made that allowed engineering and surveying students easier access to the fundamentals examination (first examination required for licensure). The rule change brings the rules in alignment with the law which now allows students to take the fundamentals examination without first applying to the Board. The new process enables students or graduates to apply to the Board for their intern certificate once they have passed the examination and graduated.

Keith Simila explained that technical corrections were made to align the rule with existing law regarding examination failures and because some fees are no longer charged and others are inadequately described. No new fees were added and some fees were removed. The rule is now updated to reflect the removal of examination and reexamination fees collected by the Board. Other fees described in the law are clarified in the rule, such as reinstatement of licenses and related late fees.

Keith Simila said another law change made in the last session was a change to the definition of land surveying. The updated definition now includes all the various types of surveying, whereas the previous law was limited to property boundary surveying. The law still requires a minimum of four years of land surveying experience prior to licensure. The previous requirement was four years of boundary surveying experience prior to licensure as a professional land surveyor. The rule change reduces the boundary experience requirement to two years and allows other types of surveying experience to count toward the total four-year experience requirement.

The National Council of Examiners for Engineering and Surveying (NCEES) changed the engineering educational requirements to align with the National Accrediting Standards. The rule adopts the NCEES standards, which expand the options of courses to include the biological sciences and more business and law courses. The rule also now allows survey programs accredited by any of the Accreditation Board for Engineering and Technology (ABET) commissions to be unconditionally approved.

Keith Simila said the pending rule brings clarity to the requirements for reinstating a retired or expired license. A new section was added because the prior rule listed the requirements under section 013 publications, which has no relation to the reinstatement process. The new section clarifies the basic requirements for license reinstatement and describes that a late fee for retired license reinstatement is no longer required. The late fee now only applies for expired license reinstatement. The prior practice was to charge a late fee for reinstatement of both retired and expired licenses. All other fees are unchanged.

Senator Guthrie asked for clarification on page 27, number .07, referring to the double underlining of "shall require a minimum of two years boundary survey experience" and wanted to know if this was a mandatory requirement since in the past the discretionary requirement was four years. **Keith Simila** explained the Board had a strong desire to make this a "hard" requirement because property line surveying affects the public more directly than any other kind of surveying. **Senator Guthrie** said the requirement was two years in the past, with the Board having some latitude. **Keith Simila** said the requirement in the past was a mandatory four years, but the requirement was changed after going through the negotiated rulemaking process.

Vice Chairman Martin asked for clarification on the double underlining of the word "shall" on page 27. **Keith Simila** indicated the information was on page 25 in the middle of the page where a double underscore denoted new text being added to a pending rule. He said the word "may" was replaced with the word "shall."

Senator Schmidt questioned the wording of "a passing score on a written ethics questionnaire." **Keith Simila** explained that as part of the application questionnaire, this is a test of the applicant's knowledge of the Board's ethical requirements of professional responsibility. This is a normal part of the application but has never been put in the rule. **Senator Lakey** questioned the wording on page 27, indicating an applicant must have a passing score on the written ethics questionnaire or the Land Surveying Examination; he wanted to know why the word "or" was being used. **Keith Simila** said the ethics questions are incorporated into the Idaho-specific land surveying exam. The land surveying examination was mostly an examination on the laws and rules of Idaho related to land surveying. He said engineers do not need to know that information. The questionnaire was separated for engineering applicants. The examination is an open-book exam; it is more expansive than ethics and also includes all of the laws specific to land surveying. **Senator Lakey** and **Keith Simila** discussed the two-year requirement and how it applies to other states with regard to comity.

Senator Guthrie asked about the wording at the bottom of page 30 regarding reexamination. He stated that in the past, an applicant could retake the test and be required to take only the portion they failed. Now the applicant who fails a portion must retake the entire test. **Keith Simila** said the requirement has always been that the applicant who fails any portion must retake the entire test. The NCEES writes the test, and the requirement is nationwide. **Keith Simila** said he is trying to update the rule in accordance with current practice,s and this portion of the rule has to be cleaned up.

MOTION:

Senator Schmidt moved to approve **Docket No. 10-0101-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
10-0104-1501**

Board of Professional Engineers and Professional Land Surveyors - Rules of Continuing Professional Development (CPD). **Keith Simila**, said the purpose of the rule change is to remove obsolete language, improve readability of the rule, clarify CPD requirements related to licensure reinstatement and allow the use of a national register to make it easier for licensees in multiple states to keep track of CPD requirements and records. He indicated the number of CPD hours required has not changed, but the rule now clarifies what they are without cross-referencing the requirements described in other sections of the rule. Much of the rule is the same. The rule replaces the term "biennium" and other language and describes the requirements more clearly. **Keith Simila** said the NCEES has decided to create a national repository where licensees from any state can upload and save documentation associated with CPD requirements at no charge. Most states have a requirement for CPD, but they differ slightly from state to state. Individuals

licensed in multiple states have the difficult task of figuring out each individual state requirement and complying with that state or face disciplinary action. A national standard now exists that is substantially similar to Idaho's requirement. A new section has been added that allows licensees the option of complying with the requirements of Idaho or with the national standard. Licensees in multiple states now have another tool that makes it easier to retain a license in multiple states.

MOTION: **Senator Schmidt** moved to approve **Docket No. 10-0104-1501**. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0206-1501 **Idaho Industrial Commission - Employers' Reports**. **Scott McDougall**, Benefits Administration Manager, Industrial Commission (Commission), gave an overview of all of the rules for the Commission. He said the Commission intends to proceed with implementation of Electronic Data Interchange (EDI) Claims Release 3.0, a secured, electronic interchange of documents. EDI would allow the submission of all relative workers' compensation claims information to be reported electronically to the Commission and would alleviate repetitive data entry. The rule change removes the Summary of Payments (SOP), Idaho Code Form 6, and directs constituents to the Commission's website at www.iic.idaho.gov to obtain a similar format for electronic submission of an SOP. The deadline for this rule to take effect is July 1, 2017. **Scott McDougall** pointed out that if a claim is reported on June 30, 2017, that it would be regarded as a paper claim and the Commission would accept the paperwork. There is no fiscal impact.

Senator Lakey disclosed for the record that he is the Senate representative on the Idaho Insurance Board dealing with workers' compensation.

Senator Schmidt and **Scott McDougall** had a conversation about changing online forms and the idea that the change should not be in the rules. **Scott McDougall** said that if there were extensive changes to the forms, the Commission would bring those items forward.

Vice Chairman Martin and **Scott McDougall** talked about paper claims versus electronic claims, the cut-off date of July 1, 2017, and the potential of being a hardship for those who have to file electronically. **Scott McDougall** mentioned that insurance companies already file electronically. He mentioned the Commission conducted negotiated rulemaking and there was no opposition.

MOTION: **Senator Schmidt** moved to approve **Docket No. 17-0206-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0207-1501 **Idaho Industrial Commission - Procedures to Obtain Compensation**. **Scott McDougall**, said the Commission intended to proceed with implementation of EDI Claims Release 3.0

Scott McDougall said the rule amendments would allow the Commission to adopt and incorporate by reference in rule the industry standard of the current "International Association of Industrial Accident Boards and Commissions (IAIABC) EDI Claims Release 3.0 Implementation Guide" (EDI Implementation Guide), published January 1, 2015, and located on the IAIABC website; and version 1.2 of the "Idaho Commission Claims EDI Implementation Guide and Tables" (EDI Guide and Tables). Updates to the EDI Guide and Tables would be made available on the Commission's website. The rule amendments would further set forth the requirements of sureties to provide information in accordance with EDI reporting standards. There is no fiscal impact. Negotiated rulemaking was conducted.

MOTION: **Senator Thayn** moved to approve **Docket No. 17-0207-1501**. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0208-1501**

Idaho Industrial Commission - Miscellaneous Provisions. Scott McDougall said the Commission intends to proceed with implementation of EDI Claims Release 3.0. The rule change would allow the electronic submission of a notice of Change of Status (COS) in a workers' compensation claim be submitted to the Commission through EDI, rather than the submission in the current paper form. There is no fiscal impact. Negotiated rulemaking was conducted.

MOTION:

Senator Lakey moved to adopt **Docket No. 17-0208-1501**. **Senator Thayn** seconded the motion.

Senator Rice and **Scott McDougall** discussed the note to claimants by employers, the reporting of a COS and EDI. **Senator Rice** indicated he thought from the wording in the rule that the party giving notice could make it any way they wanted. **Vice Chairman Martin** noted the effective date was July 1, 2017, and said he agreed with Senator Rice. **Scott McDougall** said there would be modifications and clarifications to the rule.

The motion carried by **voice vote**.

**DOCKET NO.
17-0210-1501**

Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers. Scott McDougall said the Commission intends to proceed with implementation of EDI Claims Release 3.0. The proposed rule amendment defines a Claims Administrator who adjusts workers' compensation claims in the State of Idaho and clarifies the adjuster is a resident of Idaho. The proposed rule amendment would also clarify the reports by Claims Administrators to the Commission. The rule amendment would be necessary to comply with EDI rules. There is no fiscal impact. Negotiated rulemaking was conducted.

MOTION:

Senator Guthrie moved to adopt **Docket No. 17-0210-1501**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
17-0209-1502**

Industrial Commission - Medical Fees. Patti Vaughn, Medical Fee Schedule Analyst, Industrial Commission (Commission), said the following changes were adopted as a result of formal, negotiated rulemaking to consider updates to the physician and facility medical fee schedules. Although no change to the physician fee schedule is proposed at this time, the negotiated rulemaking sessions were informative and will serve as the foundation for ongoing discussion. The deletion of the definition for rehabilitation hospital, along with the insertion of the rehabilitation term to the hospital definition, are related to the proposed change to eliminate the reimbursement standard for rehabilitation hospitals covered under the next section. She said critical access hospitals and rehabilitation hospitals are allowed 90 percent of a reasonable charge and the larger hospitals are paid according to a fixed payment method. Under Section .02(a), the exemption for rehabilitation hospitals is eliminated, so that rehabilitation hospitals will now be subject to the same reimbursement standard as the larger hospitals. Small, rural critical access hospitals are unchanged. The two main factors that brought consensus on the change to rehabilitation hospitals are:

1. Frustration among payers that the same outpatient rehabilitation services could be reimbursed three different ways depending on which provider type is billing those services.
2. Changing market conditions resulting from the acquisition of one of Idaho's few rehabilitation hospitals by a larger health system.

Patti Vaughn said consensus was reached addressing hospital outpatient services affected by major changes made by Medicare. These are primarily orthopedic procedures where payment for ancillary services is included in a single bundled payment under the primary procedure. Medicare assigned a new status indicator code to these procedures, which results in significantly inflated payments when paid according to the existing language in our rule. Consensus was reached to

create a conditional standard determined by the presence or absence of the new status indicator on the bill.

Finally, the coding guidelines published by Centers for Medicare and Medicaid Services (CMS) and the American Medical Association (AMA) are adopted. This same language appears in the section for the physician fee schedule but had not previously been included in the facility section. This will provide a reference resource for payers and providers when clarification is needed about how a medical encounter should be paid.

Senator Rice pointed out a clerical error on page 65 and said "hospitals" should not be crossed out. **Patti Vaughn** said she would have the error corrected.

Senator Lakey wanted to know what a J-1 code meant. **Patti Vaughn** said the code refers to orthopedic procedures and came about when Medicare started bundling a broader group of services. **Senator Lakey** then wanted to know what a T code referenced. **Patti Vaughn** said it is a procedure status indicator and accompanies some procedures that are billed with a status J. She explained there could be a J1 billed at 100 percent. She explained that 50 percent primarily comes from Medicare policy and how the values are weighted. She pointed out the Commission mirrors Medicare's policy.

MOTION: **Senator Rice** moved to adopt **Docket No. 17-0209-1502** and for the noted correction be made regarding "hospitals." **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 17-0209-1503 **Idaho Industrial Commission - Temporary Rule - Medical Fees.** **Patti Vaughn** said the Idaho workers' compensation hospital outpatient fee schedule is modeled after the Ambulatory Payment Classification (APC) system created by CMS. In most cases, reimbursement is calculated by multiplying a base rate set by the Commission by a relative weight value assigned by CMS. The Commission adopted this temporary rule after Medicare made changes to the relative weights, resulting in significantly inflated payments when applied with the language that existed in the rule. This temporary rule extended the use of the 2014 relative weights to keep payments stable while the Commission worked with stakeholders to address the conflicts. Consensus was reached during negotiated rulemaking and the new language appears in Docket 17-0209-1502. **Patti Vaughn** asked that this rule be approved and extended until July 1, 2016.

Senator Schmidt asked if there was a significant fiscal impact made by this rule or by the previous rule. **Patti Vaughn** said she knew of no fiscal impact and noted the Commission was trying to stabilize payments.

MOTION: **Senator Thayne** moved to adopt **Docket No. 17-0209-1503**. **Chairman Patrick** seconded the motion. The motion carried by **voice vote**.

PASSED GAVEL: Vice Chairman Martin passed the gavel back to Chairman Patrick.

ADJOURNMENT: There being no further business, **Chairman Patrick** adjourned the meeting at 2:47 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary