

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, February 11, 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 of the Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Thayn** moved to approve the Minutes of February 2, 2016. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

S 1264 **Idaho Pharmacy Act. Senator Jim Guthrie** reported this Legislation amends the Idaho Pharmacy Act with additional requirements before a vendor is issued a Durable Medical Equipment (DME) license by the Idaho Board of Pharmacy; the Legislation also adds the definition of DME supplier and adds the requirement that the facility must be accredited in the State or within 150 miles of the Idaho border. It also adds that the supplier must have sufficient inventory and staff to service or repair products. There is no fiscal impact.

Senator Guthrie said this legislation will put the DME under the control of the Board of Pharmacy. He introduced Jesse Taylor, Legislative Representative.

TESTIMONY: **Mr. Taylor** introduced Brent Seward, Vice President of Norco Medical, Incorporated. **Mr. Seward** explained the process for competitive bids regarding basic medical equipment. The bidding process is flawed as there are multiple winners. There is no cost to bid items in Idaho. The median bid is what sets the price. There is no obligation to award the bid. He said there were 325 out-of-state companies that applied for a DME license in Idaho. The purpose of the bill is to control who can receive a license for supplying DME in Idaho. Companies need to be available for the customer and not serve from afar.

Mr. Taylor testified there were a number of changes that cleaned up the current statute and he went over the changes. He said this bill does not affect a person or entity that supplies or provides insulin infusion pumps and related supplies or services; or a person or entity that supplies or provides products that are part of Medicare's National Mail Order Program; a pharmacy located in Idaho that has a current pharmacy accreditation exemption that is accepted and recognized by the national supplier clearinghouse that enables the pharmacy to be enrolled in Medicare to supply DME without having accreditation; a practitioner identified in 42 U.S. Code § 1395u(b) (18) (C) or a physician, if the practitioner or physician is supplying or providing DME to his or her own patients as part of the practitioner's or physician's own services; or a person or entity that supplies or provides devices directly to a practitioner identified in 42 U.S. Code § 1395u(b) (18) (C) or to a physician that require a prescription for dispensing to the patient as part

of his or her own services, whether mailed to the practitioner or physician for fitting or mailed directly to the patient.

Vice Chairman Martin wanted to know if the Idaho Department of Administration (DOA) Purchasing Department (Purchasing Department) was being used for bidding. **Mr. Taylor** said purchasing was separate and was not done through the State.

Senator Schmidt asked if a deposit could be required of the bidders so that if the bid is not fulfilled, the deposit would be forfeited. **John Gallagher**, Vice President, Government Relations, VGM and Associates, remarked this could be done with a surety bond.

Senator Rice remarked that in order to place a bid, a company would have to have a physical facility in Idaho or have a physical facility within 150 miles of the Idaho state border. **Mr. Gallagher** reiterated the Point of Service (POS) should be within 150 miles of the Idaho border. **Senator Rice** said it seemed a business would have to already have been established and it seemed to be a prohibitive restriction to those companies who wanted to get into the business. He wanted to know if anyone sought a legal opinion as to whether this legislation would cause an undue burden on interstate commerce. **Mr. Taylor** said he had spoken with a number of people and the 150-mile radius does not impact commerce laws. **Senator Rice** said he would be more comfortable if there was an analysis of decisional law.

Vice Chairman Martin remarked he is working on an interim committee regarding purchasing. The interim committee wrestled with the concept of companies that are doing bids to upset the system and he said he felt this bill was potentially imposing on the ability of the Purchasing Department to disqualify bidders under certain criteria. He wanted to know if there was a way to disqualify certain bidders through some parameters that would eliminate this problem. **Mr. Taylor** said this application has been done in several other states. The ultimate goal was not to stop any kind of commerce or stop anyone from being able to bid or participate. There should be a financial impact before a company could deliver a bid with lowball prices.

MOTION:

Senator Rice moved that **S 1264** be held at the call of the Chair for further information and discussion. **Vice Chairman Martin** said his intent was to hold this legislation until more information is received. His concern was the legislation may be imposing a restriction on the applicant that is unintentional.

DISCUSSION:

Senator Guthrie and **Mr. Gallagher** had a discussion about what other states are doing; if this was appropriate bidding practice; whether pricing has gone up or down; the relationship to the Centers for Medicare and Medicaid Services (CMS); and how this legislation dovetails at the federal level to move away from "suicide" bidding. ("Suicide" bidding is a response to a tendering exercise in which a potential supplier, anxious to win business, submits a proposal to carry out the work for less than it will cost.) Contracts are awarded to the Medicare suppliers who offer the best price and meet applicable quality and financial standards. Contracted suppliers will be paid the bid amount. The bid price amount is derived from the median of all winning bids for an item.

Mr. Gallagher explained the method of non-binding bidding was enhanced through the Affordable Care Act (ACA), which required 110 Competitive Bidding Areas (CBAs) bid in multi-competitive bid areas. Anyone from anywhere could bid. There were companies that bid with the only intention that if they won the contract they would sell the contract to someone who was local or they could try to do a sub-contract. Unfortunately, the suicide bids were so low, the company

could not sell the contracts. Because the bids were non-binding, when a hospital tried to discharge a patient and the hospital contacted a DME contractor, if the contractor was not awarded the bid, the hospital would have to contact the winner of the contract, which could have been in Texas or Florida. The winner of the contract could not provide the DME and turned the hospital down, since the contract was non-binding. Recently, 17 contracts in Boise were awarded for oxygen and only seven were within a 50-mile radius of the area.

Mr. Gallagher stated the other problem is once Medicare uses a set price, Medicaid and third-party payers follow. That has a triple impact to the local provider. There are only two states, Maryland and Tennessee, that have licensure laws. CMS did not follow the state of Tennessee or Maryland licensure laws. However, CMS was forced by the courts to go back and follow those licensure laws. Some of the contracts were thrown out, but not the lowball bids. Several states, namely Alabama, Colorado, Tennessee and Arizona, all looked at the Commerce Clause (its interpretation by the U.S. Supreme Court has played a key role in either promoting or hindering efforts to achieve landmark legislation affecting the public's health) and that is why the clause says within 150 miles of the state border to provide service to the patient. Alabama uses 40 miles as a POS to the patient to make sure there is not an issue with the Commerce Clause. **Mr. Gallagher** said this legislation is an effort to make sure the local providers and outside bidders are held to the same standards and have the proper licensure. There are seven states that have licensure signed into law and there are 19 others that are in the process.

Senator Rice and **Mr. Gallagher** discussed licensure in other states and possible approaches to bidding that help serve patients. They talked about what this legislation is trying to accomplish in that each state requires licensure, leveling the playing field.

TESTIMONY:

Mr. Seward mentioned the original intent of the competitive bid situation was to bid the 110 stakeholder markets (Medicare providers, government leaders and auction experts). Since then, the pricing has been taken from the 110 largest metropolitan markets in the country and moved to the rural areas of America. **Mr. Seward** remarked the State is in serious trouble and he is representing the small DME companies all over the states of Idaho, Montana and Wyoming. He said he is receiving phone calls on a regular basis from owners, privately-owned companies, that are going to have to sell their business as they are no longer profitable. There is some serious financial damage occurring because of the Claims Security of America (CSA) filing program the federal government has put into place. The purpose is to block the bids of those companies that are not intending to be here. The intention is not to block those businesses who truly want to do business in the State of Idaho. Businesses need to actually service the customers. The way the bid is administered now does not assure that will happen.

Vice Chairman Martin seconded the motion. The motion carried by **voice vote**

RS 24390

Repairing Damaged Vehicles. **Senator Winder** said the purpose of this legislation is to make it an unfair practice for an automobile insurance company not to follow all components of a standardized repair manual when appraising a damaged vehicle. The shops bid and do the repairs based on the repair manual. After approval from the insurance company and when it is time to get paid, the insurance companies try to lower the cost of repairs. The repair companies lose an average of 5 percent per bid. This is a significant loss to the automobile repair companies.

MOTION:

Vice Chairman Martin moved to print **RS 24390.** **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote.**

RS 24199 **Idaho Trust Institutions Act. Trent Wright**, President, Idaho Bankers Association, said the purpose of this legislation is to amend the Idaho Trust Institutions Act to clarify that an individual who does not engage in trust business may serve as a trustee of a trust without obtaining a state trust company charter.

MOTION: **Senator Rice** moved to print **RS 24199**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

RS 24198 **Trust Sale. Mr. Wright** said this legislation relates to personal property left behind following a trustee's sale. Its purpose is to clarify the liability for disposition of personal belongings left at a property. There is no fiscal impact on state or local funds.

MOTION: **Senator Lakey** moved to print **RS 24198**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

RS 24395 **Life Insurers - Offer Lapse or Termination Protection to Holders of Life Insurance Policies. Senator Heider** said the purpose of this legislation is amend Idaho Code Chapter 18, Title 41, to ensure that life insurance companies notify policyholders of lapse or termination of their policy by certified mail within 30 days. **Senator Heider** explained that a notice could be sent to a second individual who would be responsible for an estate.

MOTION: **Senator Martin** moved to print **RS 24395**. **Senator Ward-Engelking** seconded the motion.

A discussion ensued with **Senator Heider** and the Committee about how the insurance company finds out who the other person is, what happens if the notice is not sent, and the idea of giving someone something they did not pay for. **Senator Heider** said that if the notice was not sent, the insurance company was still liable.

The motion carried by **voice vote**.

RS 24443 **Home Owners' Association (HOA) Attorney's Fees. Senator Lakey** said this legislation clarifies the HOAs may only seek attorney's fees and costs from a property owner and place a lien on an individual's property if those reasonable attorney's fees and costs have been awarded by the courts. There is no fiscal impact.

Senator Rice declared for the record that he had a conflict of interest as he has a number of clients who have been fined. He said this is a totally improper practice and a necessary bill.

MOTION: **Senator Thayn** moved to print **RS 24443**. **Senator Heider** seconded the motion. The motion carried by **voice vote**

RS 24373 **Appraisal Management Company (AMCs) Registration and Regulation. Sarah Fuhriman**, Real Estate Valuation Advocacy Association (REVAA), said this legislation is relating to Appraisal Management Companies (AMCs). This legislation creates an oversight system for AMCs that do business in Idaho. **Ms. Fuhriman** gave a brief history of REVAA's and AMCs.

Ms. Fuhriman remarked that in most residential real estate transactions, the lender must have an independent appraisal of the property to ensure an accurate, objective valuation. An AMC is often the entity that provides this independence, contracting with an appraiser to perform the appraisal. Without this legislation in place by December 2018, lenders in federally-related residential real estate transactions, such as the Veteran's Administration, Fannie Mae, Freddie Mac and others, will not be able to use most AMCs. The complexities of federally-regulated transactions will make it challenging to determine which lending transactions may

be completed by AMCs that are not federally regulated. A rough estimate from REVAAs members indicated they collectively facilitated more than 25,000 Idaho mortgage loan originations in 2015 alone. If lenders are not able to use these companies there could be negative implications for Idaho consumers. This could result in disruption and delays to consumers, realtors, appraisers and lenders in residential real estate loan transactions. There is no impact to the General Fund or local government.

Ms. Fuhriman acknowledged that lenders that currently use an AMC will have to spend money and resources to build internal appraisal boards and manage all of the compliance responsibilities to ensure appraisers are engaged independently and are not unduly influenced for each state. This could result in less access to consumer credit. Although this legislation does not require lenders to use AMCs, it does preserve them as an option for federally related transactions.

Ms. Fuhriman reported that in June 2015, a group of federal financial service agencies issued a final rule, pursuant to federal statute, establishing certain minimum standards for AMCs. This rule states that if an AMC oversees a panel of more than 15 state-licensed appraisers, or more than 25 in two or more states, they may not provide appraisal services for a federally related transaction unless they are registered with the state or are subject to federal oversight. Idaho is in a good position to ensure regulation of AMCs is not overly burdensome, since the State has waited for the final rule to establish the minimum standards.

The Real Estate Appraiser Board (REAB) operates solely on dedicated funds received from fees paid by appraisers regulated by the REAB. If this bill passes, an appropriation would be needed to provide spending authority for the fees collected. The REAB estimates that the Bureau of Occupational Licenses (BOL) would need spending authority for one full-time position (FTP) at a cost of \$45,000 and \$20,000 in operating expenditures to administer the provisions of the law, for an estimated total cost of \$65,000. The fees collected from AMCs registered under this law would cover these costs. No General Fund money would be appropriated to cover these costs.

Ms. Fuhriman pointed out the Idaho Bankers Association is strongly supportive of this legislation. Consultation has been done with the Idaho Realtors Association, the BOL, the REAB and appraisers throughout the drafting process and there is no known opposition.

MOTION: **Senator Rice** moved to print **RS 24373**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

RS 24169 **Workers' Compensation**. **Chairman Patrick** announced that **Kent Day**, Attorney, requested **RS 24169** be removed from the agenda earlier in the day.

RS 24459 **Relating to Insurance Producer Licensing - Bail Bond Agents**. **Mark Estess**, Eiguere & Ellis Public Policy Firm, said the proposed legislation allows the Director of the Idaho Department of Insurance (DOI) to penalize a bail agent or suspend or revoke a bail agent's license if the bail agent, his employees, his contractors or his agents acting under his supervision solicit or entice a person incarcerated in a prison, jail, courthouse or other place of detention to refer business to the bail agent. The proposed legislation requires the Director of the DOI to suspend a bail agent's license if the bail agent solicits business in or about a place where prisoners are confined or in or about any court. There is no fiscal impact to the General Fund.

Vice Chairman Martin referred to page 3 of the RS and said he understands "in" but wanted a clarification on the word "about." **Mr. Estess** said the wording

captured the intent. **Senator Rice** remarked he had a serious concern with the legislation. He gave an example of a business located across the street from the jail. **Mr. Estess** agreed that is a problem, but the intent was a physical proximity issue. **Senator Rice** indicated he thought it was a better idea to have a clean bill stating the intent.

MOTION: **Senator Rice** moved to return **RS 24459** to the sponsor. **Vice Chairman Martin** seconded the motion. **Senator Guthrie** remarked if the RS comes back it has to go through a privileged committee. **Chairman Patrick** said the RS can come back to this Committee for a hearing after it has gone to a privileged committee. The motion carried by **voice vote**.

RS 24439C1 **Relating to State Employee Health Plans - Health Savings Accounts (HSAs).** **Senator Thayn** said this legislation requires the State to offer State employees a health benefit plan that utilizes HSAs paired with high-deductible health plans. An HSA is a tax-free financial account that is designed to allow State employees to set aside money for current and future medical expenses. This legislation further requires that the employer cost of the HSA-compatible health plan does not exceed the average per-person employer cost of traditional insurance plans that the State is currently offering.

Senator Thayn stated HSAs, paired with high-deductible health plans, can create a win-win situation for taxpayers and public employees. The plans provide state employees more savings, choice and control over their health care needs and expenses, while offering an opportunity for the State to reduce its health insurance costs for employees. This bill will require a \$65,000 change in the State Controller's computer system. Funding of HSAs must be balanced with reduced costs by offering higher deductible health insurance products.

Vice Chairman Martin wanted to know the position of the Department of Administration (DOA). **Senator Thayn** said he has been working with the DOA for the last couple of years on this issue. **Senator Heider** wanted to know about the \$65,000 it would cost the State Controller's office to modify the computer system. **Senator Thayn** said that in working with the Controller's office, they indicated changes would be required. The \$65,000 is what it would cost to set up individual accounts.

MOTION: **Senator Martin** moved to print **RS 24439C1**. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

S 1265 **Insurance Premium Tax.** **Hyatt Erstad**, Board Chairman, Department of Insurance (DOI), said this bill corrects an inadvertent error in S 1014 (2013 Session Laws, Chapter 90) that eliminated a longtime funding source to the Idaho Individual High Risk Reinsurance Pool (IIHRRP) established in Chapter 55, title 41, Idaho Code. Since 2000, Idaho Code § 41-406(d) has provided that one-fourth of the insurance premium tax, to the extent it exceeded \$45 million, was appropriated to the IIHRRP. Section 2 of S 1014 eliminated funding effective October 1, 2015, despite the fact that the bill's focus as reflected in its Title and Statement of Purpose was on three unrelated health and welfare programs: Children's Health Insurance Program (CHIP) Plan B, Children's Access Card and the Small Business Health Insurance Pilot Program. The IIHRRP funding mechanism was not mentioned in the Title or the Statement of Purpose. This bill reinstates the IIHRRP historical funding source and formula as it was before S 1014 passed. This bill has a retroactive effective date to October 1, 2015, thereby correcting the error as if it had not occurred.

In 2013, S 1014, which inadvertently repealed the IIHRRP appropriation, had a fiscal note providing that it would have no impact on the General Fund. Likewise,

the proponent believes that there is no fiscal impact to the General Fund in this bill, because the funds at issue have not yet reached the General Fund. However, a technical fiscal note would also explain that, absent amendment, S 1014 will result in a loss of revenue to the IHRRP in the amount of \$5.7 million and a corresponding gain in revenue to the General Fund in the amount of \$5.7 million. A further technical interpretation of the fiscal impact to this bill's correction could show that, without the allocation of the \$5.7 million to the IHRRP, health care costs would be shifted to Medicaid, the Indigent Fund, the property tax payers and ultimately to the consumer. Since inception, the IHRRP has paid out \$100 million in claims and has served 10,656 Idahoans with severe high risk health conditions

MOTION: **Senator Rice** moved that **S 1265** be sent to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

A discussion ensued between **Senator Schmidt** and **Mr. Erstad** about the number of high-risk people who have not migrated to Your Health Idaho (YHI). The IHRRP Board has made an exerted effort to encourage providers and carriers to follow up with clients in the IHRRP. CMS says coverage still qualifies and there is still a need to insure these clients.

Senator Thyan asked how the money was accumulated and did the money return to the General Fund? **Mr. Erstad** said there is no cap on the money and the monies are extremely liquid. In 2014, \$5.4 million was paid out. At this point there is no legislation that does away with the IHRRP. All of the federal government grants have been depleted. **Senator Schmidt** wanted to know the current balance. **Mr. Erstad** said it is over \$21,632,700. **Senator Schmidt** asked what the balance was last fall and **Mr. Erstad** said is more than \$22 million.

The motion carried by **voice vote** with Senators Thyan and Schmidt voting nay. **Senator Schmidt** remarked a more prudent approach should be taken regarding this large reserve. Senator Martin will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Patrick** adjourned the meeting at 2:35 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary