

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 24, 2022

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Martin, Vice Chairman Riggs, Senators McClusky (Heider), Lee, VanOrden (Bair), Zito, Stennett, and Wintrow

ABSENT/ EXCUSED: Senator Harris

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.

INTRODUCTION: **Chairman Martin** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:13 p.m.

PASSED THE GAVEL: Chairman Martin passed the gavel to Vice Chairman Riggs.

DISCUSSION: **Vice Chairman Riggs** gave a brief overview on the rule process. He relayed that the Committee would be hearing the pending rules and pending fee rules but would wait until all have been heard before meeting to approve or reject any of the rules.

Mr. Tim Frost, Deputy Director, Idaho Division of Occupation and Professional Licenses (DOPL) introduced himself to the Committee. **Mr. Frost** noted that he was presenting each of the pending rule and pending fee rule docket within the health professions docket chapters. **Mr. Frost** explained the omnibus this year was in line with the Red Tape Reduction Act from Governor Little. In 2019 and 2020, the boards spent a significant amount of time identifying areas that were obsolete, duplicative of statute, or unnecessary. In 2021 their division continued with the review and they have provided the rule chapters that were outlined today.

DISCUSSION: **Chairman Riggs, and Senator Lee** asked for clarification on how the public could follow along. **Mr. Frost** stated the best way would be to go to the Office of Rules Coordinator website. The right side showed 2022 Legislative Session Administrative Rules Review Book. The House side and the Senate side are displayed. This year all of the DOPL rule chapters were published into two dockets, pending rule docket and pending fee rule docket under Commerce and Human Resources Committee.

DOCKET NO. 24-0000-2100 **Notice of Omnibus Rulemaking- Proposed Rule, p. 410 General Provisions of the Board of Medicine.** (IDAPA 24.33.03) **Mr. Frost** stated the following changes were made:

- Added a provision requiring licensees to cooperate in Board investigations, consistent with all other boards. (Rule 150)
- Removed language related to complaints as the rule is duplicative of statute section 54-1815 and 54-1850, Idaho Code. (Rule 151)
- Removed language which was duplicative of the Idaho Telehealth Access Act, Idaho Code 54-5701. Removing the redundancy was consistent with executive order 2020-13 to permanently remove barriers waived in response during COVID-19. (Rule 201-206)
- In total, they simplified and cut the rule chapter by 30%.

DISCUSSION: **Senator Zito** asked what effect would striking this have upon Telehealth use in Idaho? **Mr. Frost** responded that since these were duplicative the functional practice of how Telehealth was performed in Idaho would not be affected. Neutral impact. Clarification was requested and discussed in regards to failure to cooperate. **Mr. Frost** explained that complaints oftentimes were related to a particular provider or an entire system of providers. **Senator Zito** asked for clarification in regards to patient records, ensuring that a patients records are confidential and have not been breached. **Mr. Frost** pointed out that under the provisions of the Medical Practice Act, Section 54, 86A and Public Records Act, found in Section 74, 106 subsection 11 complaint investigations or informal discipline through the process of the Board of Medicine was confidential. It was not open in any form to the public and was not discoverable, including patient information if somebody were to request a public record. **Senator Stennett**, questioned whether removing so much information made it harder for the public to understand what was required of them and where to find the information to be properly provided. **Mr. Frost** informed the Committee that by removing unnecessary requirements it simplified the rules so that it was clear to constituents, consumers, and licensees. Thus submitting a complaint was a quick process for all patients.

DOCKET NO. 24-0000-2100F **Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule**, p. 84 **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-0301-2100F **Rules of the State Board of Chiropractic Physicians**, p. 155. (IDAPA 24.03.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-0601-2100F **Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants**, p. 187. (IDAPA 24.06.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-0901-2100F **Rules of the Board of Examiners of Nursing Home Administrators**, p. 204. (IDAPA 24.09.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-1001-2100F **Rules of the State Board of Optometry**, p. 208. (IDAPA 24.10.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-1101-2100F **Rules of the State Board of Podiatry**, p. 216. (IDAPA 24.11.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-1201-2100F **Rules of the Idaho State Board of Psychologist Examiner**, p. 220. (IDAPA 24.12.01) **Mr. Frost** stated the following changes were made:

- Removed an application for service extender \$100 fee (Rule 150) - Aligned the use of service extenders with the statute provisions of exemption from licensure in section 54-2303(4) Nothing in this chapter shall be construed to prevent unlicensed persons from providing certain services under the direct supervision and control of licensed psychologists, under such rules as may be established by the board.
- Simplified the redundant language for written examinations for the EPPP and provisional certification of prescription authority, (Rule 200, 201, and 251)
- Simplified the requirements for service extenders from a lengthy board approval process to a supervision agreement between the psychologist and service extender. The rule alignment was consistent with how other health professions regulate supervision and standard of care agreements. (Rule 450)
- Removed duplicative rules of the Idaho Telehealth Access Act in Title 54, Chapter 57, Idaho Code. Removing the redundancy was also consistent with executive order 2020-13 to permanently remove administrative rules barriers waived in response during COVID-19. (Rule 601)

- Corrected a draft and bulletin publication error from 2020, related to supervision requirements for provisional certification holders. (Rule 701.03)
- In total, they simplified and cut the rule chapter by 25%.

DISCUSSION: **Senator Lee** asked Mr. Frost to provide an example of other boards that have removed extenders. **Mr. Frost** stated it would be the same as written agreements between pharmacists and pharmacy technicians or written agreements between physicians and physician assistants. **Senator Lee** asked if there was a practitioner available to answer some of the Committee questions. Mr. Frost stated they do not have a licensed psychologist on staff in their division. However, they worked closely with the Idaho Psychologists association on these rules, and the association supported Rule 450. **Chairman Martin** requested clarification on the timetable, and asked if specific groups were provided ample time to review, respond with concerns, problems, along with timely resolution to their concerns. **Mr. Frost** explained the process for these changes in detail and emphasized that it was a negotiated process and there was no opposition to Rule 450. He acknowledged they did hear comments on the permitting process and he believed there would be parallel legislation this year to work on that issue. **Senator Lee** commented she would like to see some legislation and then the rule would follow. **Mr. Frost** relayed the provisions of Rule 450 align with their current statute 54.23.03.4. He relayed that if no bill passed, these rules would be in effect and provide a framework for licensed psychologists to work with service extenders. If a bill passed this session that specifically registered or permitted service extenders it would work well with Rule 450. **Senator Wintrow** clarified this reduced red tape, increased services, created opportunity for additional service providers, without creating more steps. **Mr. Frost** confirmed that she was correct.

DOCKET NO. 24-1301-2100F **Rules Governing the Physical Therapy Licensure Board**, p. 235. (IDAPA 24.13.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-1401-2100F **Rules of the State Board of Social Work Examiner**, p. 245. (IDAPA 24.14.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-1501-2100F **Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists**, p. 256. (IDAPA 24.15.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-1601-2100F **Rules of the State Board of Dentistry**, p. 267. (IDAPA 24.16.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-1901-2100F **Rules of the Board of Examiners of Residential Care Facility Administrators**, p. 292. (IDAPA 24.19.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-2301-2100F **Rules of the Speech, Hearing, and Communication Services Licensure Board**, p. 299. (IDAPA 24.23.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-2401-2100F **Rules of the Genetic Counselors Licensing Board**, p. 310. (IDAPA 24.24.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-2601-2100F **Rules of the Idaho Board of Midwifery**, p. 322. (IDAPA 24.26.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-2701-2100F **Rules of the Idaho State Board of Massage Therapy**, p. 332. (IDAPA 24.27.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

**DOCKET NO.
24-3101-2100F**

Rules of the Idaho State Board of Dentistry, p. 379. (IDAPA 24.31.01) **Mr. Frost** stated the following changes were made:

- Removed unnecessary definitions not used, not found in statute, or no longer needed. (Rule 10)
- Simplified CE requirements for consistency between licensees at 30 hours. (Rule 15)
- Simplified redundant language around provisional licensure and volunteer dental hygiene services. (Rule 21 and 22)
- Simplified the expectations for documentation of patient records, the timeline (7 years), and transfer of patient records. (Rule 26)
- Simplified and removed redundant language related to dental therapists collaborative practice with a supervising dentist. (Rule 35)
- Simplified language related to General Anesthesia and Deep Sedation Permits making the training requirements easier to read. (Rule 44)
- Removed duplicative rules of the Idaho Telehealth Access Act in Title 54, Chapter 57, Idaho Code. Removing the redundancy was also consistent with executive order 2020-13 to permanently remove administrative rules barriers waived in response during COVID-19. (Rule 55)
- In total, they simplified and cut the rule chapter by 10%.

**DOCKET NO.
24-3301-2100F**

Rules of the Board of Medicine for the Licensure to Practice Medicine and Osteopathic Medicine in Idaho, p. 406. (IDAPA 24.33.01) **Mr. Frost** stated the following changes were made:

- Added reference to a provision of the Medical Malpractice Code, specifically Idaho Code 6-1002. (Rule 000)
- Removed unnecessary abbreviations and utilize abbreviations where appropriate. (Rule 11, 51, and 79)
- Removed unnecessary repetition of words in the foreign graduate rule. (Rule 51)
- Aligned the rules with the statutory changes of S 1093 in Idaho Code 54-1807A which replaced supervision of physician assistants with collaborative practice. (Rule 162)
- Added some clarifying language to the section addressing cosmetic treatments. (Rule 164)
- In total, they simplified and cut the rule chapter by 10%.

DISCUSSION:

Chairman Martin asked for an update on the affect of this change. **Mr. Frost** reminded the Committee what the bill accomplished. Everyone collaborated and there were templates and sample agreements provided.

**DOCKET NO.
24-3302-2100F**

Rules for the Licensure of Physician Assistants, p. 413. (IDAPA 24.33.02) **Mr. Frost** stated the following changes were made:

- The Board made significant changes to align the rules with the statutory changes of S 1093 in Idaho Code 54-1807A. The bill last year removed the need for physician assistants to have delegation of service agreements and replaced supervision of physician assistants with collaborative practice. The Board also simplified the rules by combining the practice standards rule (30) and the emergency care rule (31) into the scope of practice rule (28). (Rule 10, 28, 30, and 31)
- Removed unnecessary language regarding prescription writing. (Rule 32)

- In total, they simplified and cut the rule chapter by 35%.

DOCKET NO. 24-3304-2100F **Rules for the Licensure of Naturopathic Medical Doctors**, p. 416. (IDAPA 24.33.04) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-3305-2100F **Rules for the Licensure of Athletic Trainers to Practice in Idaho**, p. 419. (IDAPA 24.33.05) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-3306-2100F **Rules for Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho**, p. 422. (IDAPA 24.33.06) **Mr. Frost** stated the following changes were made:

- Aligned the rules with statutory changes in S 1016 to the Respiratory Care Practice Act, which removed temporary licenses and permits and created provisional licenses and permits.
- Removed unnecessary definitions. (Rule 10)
- Removed unnecessary language regarding the application of the law to polysomnographers and removed discipline language that is duplicative of the statute. (Rule 11, 33, and 34).
- Simplified the CE rules and clarified continuing education requirements at 12 hours yearly. (Rule 32)
- In total, they simplified and cut the rule chapter by 50%.

DISCUSSION: **Chairman Martin** inquired what the difference was between the two of them? **Mr. Frost** responded the respiratory therapists had been the providers that truly provided help during COVID-19. They cared for ventilated patients, provided inhalers, and respiratory medications. **Senator Lee** asked for clarification on Rule 33 and 34 that stated the licensed physician does not need to be physically present or not on the premises at all, specifically in regards to being supervised. She inquired how this was being handled in other professions and asked **Mr. Frost** to research and get back to the Committee. **Mr. Frost** responded that it is broader than what had been in the provisional or temporary rules and that he would specifically review the element of the rule and provide feedback to the committee.

DOCKET NO. 24-3307-2100F **Rules for the Licensure of Dietitians**, p. 425. (IDAPA 24.33.07) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-3401-2100F **Rules of the Idaho Board of Nursing**, p. 426. (IDAPA 24.34.01) **Mr. Frost** stated this section was reviewed and there were no changes necessary.

DOCKET NO. 24-3601-2100F **Rules of the Idaho State Board of Pharmacy**, p. 467. (IDAPA 24.36.01) **Mr. Frost** stated the following changes were made:

- Updated the waivers and variances provisions to be consistent with the Idaho Administrative Procedures Act and Division administrative authority in 67-2604. (Rule 102)
- Clarified the rule separating licensees continuing education requirements from the licensure renewal time period to reduce confusion. (Rule 213)
- Clarified that any student with a high school equivalency diploma may qualify for pharmacy technician registration, included those who were homeschooled or in an apprenticeship training model. (Rule 220)
- Added a cancellation clause of 45 days for the CS registration, if the licensee doesn't obtain their corresponding DEA registration. The DEA changed their 20-year federal policy on issuing DEA registrations before the state of Idaho issued the state CS registration, to after. This rule change on our end was simply

to ensure there were no delays in prescribers obtaining the necessary State CS registration. (Rule 224)

- Simplified the requirements of drug outlets without an onsite pharmacist or prescriber. This rule related to telepharmacies, which provided a critical access point to rural Idahoans. The board simplified the technology storage requirements to 30 days, removed redundant security language, made the rule consistent with the telehealth access act, and removed requirements for drug inventory that were more restrictive than federal requirements. (Rule 302)

DISCUSSION: **Senator Lee** questioned Rule 220 having the education requirement removed. **Mr. Frost** explained that the initial registration for working as a pharmacy technician included the education and criminal background check as part of the baseline framework. He referred the Committee to Rule 100. The rule change removed confusion regarding who could register as a pharmacy technician, it did not change the delegation model in Rule 100. **Chairman Riggs** asked if practitioners were allowed to prescribe controlled substances during period between the state license and DEA registration. **Mr. Frost** responded no and clarified that both the Idaho and DEA registrations were required.

ADJOURNED: There is no further business at this time, **Chairman Riggs** adjourned the meeting at 4:20 p.m.

Senator Martin
Chair

Lena Amoah
Secretary