

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 27, 2012

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Smyser, Heider, Vick, Nuxoll, Bock, and Schmidt

**ABSENT/
EXCUSED:**

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.

MINUTES: **Chairman Lodge** called the meeting to order at 3:05 p.m.

MINUTES APPROVAL **Senator Schmidt** moved, seconded by **Vice Chairman Broadsword**, that the minutes of January 18, 2012 be approved. The motion carried by **voice vote**.

S 1295

Relating to Regulation and Licensure of Massage Therapists. **Senator Hammond**, District 5, advised that this legislation recognizes the value and the legitimacy of massage therapy both as a meaningful contribution to healing and a sustainer of better health by providing a process for licensing massage therapists. Currently, anyone may advertise themselves as a massage therapist regardless of their level of training or lack thereof. He stated that requiring a license of professional and trained massage therapists will insure that citizens seeking this form of therapy will receive appropriate care. **Senator Hammond** introduced **Suzanne Budge** who represents the American Massage Therapy Association (AMTA), Idaho Chapter.

Ms. Budge acknowledged a broad group of representation supporting the bill in attendance, all of whom are volunteers in their various professional organizations. She stated they had introduced the framework of the bill last year and worked on it with all the stakeholder groups during the interim, including the Bureau of Occupational Licensing and State Board of Education, who will implement the bill. She advised those who practice massage therapy are independent contractors and small business owners who often work between different municipalities, as well as in hospitals and other health care settings. **Ms. Budge** introduced **Paul Westin**, AMTA, Government Relations Chair, Idaho Chapter.

Mr. Westin stated the Idaho Chapter is comprised of 300 massage therapists; as a Chapter, they support **S 1295**. He stated the bill defines the practice of massage therapy, and creates entry level training and educational standards for massage therapy professionals. It does not overregulate the practice but protects both practitioners and the citizens who rely on them. He advised that in addition to the 300 AMTA members, the Associated Body Work Massage Professionals (ABWM) has 600 members, and there are an estimated 300 independent practitioners in Idaho.

Vice Chairman Broadsword asked if the AMTA intends that a Board be appointed to develop rules which would come back to the Committee for approval in the next legislative session. **Mr. Westin** replied that is correct.

Senator Darrington asked for confirmation that approximately 25 percent of massage therapists in the state are unlicensed, and if AMTA expects opposition when they come back with rules for consideration. **Mr. Westin** responded 25 percent is correct, and that there is always the possibility for opposition; however, they have worked very hard across the board - not only with the massage therapy associations but with other groups within the state - to alleviate as much potential opposition as possible. **Senator Darrington** expressed his uncertainty as to why Idaho is vulnerable just because surrounding states have licensure regulation, and asked what the safety threat is to non-licensure. **Mr. Westin** advised an example of a safety threat would be a therapist who is not properly trained being unable to recognize a potentially dangerous situation such as a deep vein thrombosis that, if massaged too vigorously, could dislodge resulting in a stroke.

TESTIMONY:

Crystal Spicer, a massage therapist and body worker for 12 years, who is licensed in another state as well as with the City of Boise spoke **in opposition to S 1295**. She stated the potential for injury in massage therapy is very small and this may account for low insurance premiums. She noted many massage therapists work part-time; the additional cost of licensure will be an undue hardship.

Vice Chairman Broadsword asked what the fee is for licensure in the city of Boise. **Ms. Spicer** responded she believes it is \$35 and licensing fees in this bill could be as high as \$200. **Vice Chairman Broadsword** related that the bill states the \$200 fee is a cap, and that most boards under the Bureau of Occupational Licenses set their fees based upon the number of licensees and how much they need to operate that board. She believes that the potential for 1,200 licensees would not necessitate such a high fee for licensure.

Senator Schmidt asked **Ms. Spicer** if she belongs to either of the two professional massage therapist associations and, if so, why she became a member. **Ms. Spicer** replied she belongs to the AMTA. She joined the AMTA because the city of Boise requires that therapists be a member of a massage therapist association.

Vice Chairman Broadsword asked that other testimony address who is grandfathered in this legislation and whether everyone currently practicing will be required to be licensed. She also asked that the pre-emption of local regulation issue be addressed.

TESTIMONY:

Jean Robinson, Government Relations Director, ABMP, spoke **in support of S 1295**. She stated claims do occur and a review of Idaho claims over the past five years ranges from hot stone burns to rotator cuff damage. She added that although insurance costs have risen, ABMP has not had to share that cost with members because they keep growing in membership and they now have 700 members. She advised that it is not ABMP's goal to put anyone out of business, and their research indicates almost everyone will be able to qualify for the grandfathering provision. They have attempted in this legislation to accommodate as many existing massage therapists as possible.

In response to **Vice Chairman Broadsword's** question about the pre-emption of local regulation, **Ms. Robinson** advised that it is not uncommon for a local jurisdiction to require a massage therapist to be licensed and also require a business license. She stated their desire is that state law supercede local licensing requirements for massage therapists and then the local area could request that a massage therapist show their state license and then charge a small fee for a business license.

Vice Chairman Broadsword asked if license applications will be released before rules are adopted. **Ms. Robinson** responded, "No," and if wording in the bill needs to be revised to accommodate that, they will do so.

Senator Vick asked if the associations have considered setting requirements and issuing certificates without involving the State. **Ms. Robinson** advised that ABMP has done so for the past 25 years and the AMTA has done so for 40+ years and while they can refuse membership, only the state has the authority to discipline or revoke a license.

Senator Schmidt asked if **Ms. Robinson** supports massage therapists in other states who may be having difficulties with their board. **Ms. Robinson** responded she does. ABMP has 80,000 members nationwide and it is part of her job to deal with massage therapist members who are having difficulty in getting their license or perhaps have a disciplinary issue. She stated they have adopted in this legislation the best practices from other states.

Senator Schmidt commented that small professional organizations sometimes run into financial problems when they have to deal with costly disciplinary issues. He asked if they have compared other states of similar size in number of practitioners and the frequency of disciplinary issues. **Ms. Robinson** replied that nationwide, one percent of massage therapists who are licensed by the 43 states that already license are disciplined.

Senator Heider noted one of the requirements for licensure is good moral character, and asked how that is determined. **Ms. Robinson** advised that language is taken directly from Bureau of Occupational Licensing verbiage relating to other boards. It is a phrase they are very used to working with and prefer it to be broad so that they can decide what to ask for during the process of developing the rules and regulations.

Senator Darrington commented that the terms "moral character," "good moral character," and "moral turpitude," which are frequently used throughout *Idaho Code*, have considerable case law associated with them. He asked if that was taken into consideration when it was included in this legislation. **Ms. Robinson** deferred to **Suzanne Budge**, who stated that they worked closely with the Bureau of Occupational Licensing and its attorney on this issue. They were warned it is a term that may be questioned, but it is consistent in how it pertains to licensing acts.

TESTIMONY:

Suzie Lindberg, a small business owner/sole proprietor, practicing massage therapy for nine years in Boise, testified **in support of S 1295**. She stated the current situation is very prohibitive to growing her business. She stated if she were to attempt to outcall to clients around the Treasure Valley area, she would not only incur the Boise license fee, but also a charge from Meridian and another from Garden City. Additionally, through those municipalities she would endure a background check, fingerprinting and, in some places, the requirement for letters of reference or recommendations.

Vice Chairman Broadsword commented there is nothing in this legislation that would require a background check or fingerprinting; she asked if this is something that might come through rule. **Ms. Lindberg** deferred to **Ms. Robinson**, who replied they could very well require a background check through the moral character inclusion, but do not have to do so.

TESTIMONY: **Kris Ellis**, on behalf of the Northwest Career Colleges Federation, testified **in support of S 1295**. She addressed how this legislation differs from other licensure laws that have been a problem in the past. Key is that the schools are identified and must be registered with the State Board of Education. **Ms. Ellis** reported there are 13 massage schools in the state that are registered with the board, as well as others through the universities that are exempt in that process. Additionally, **Ms. Ellis** stated that a background check is helpful for people in Idaho. The legislation also gives the board the ability to use other avenues of verifying moral character if someone is licensed in another state, such as calling that licensure board to verify whether or not there were complaints or issues with the therapist.

TESTIMONY: **Susan Beck**, Massage Therapy Program Coordinator, Department of Health Occupation, College of Technology, Idaho State University (ISU), spoke **in support of S 1295**. **Ms. Beck** stated they are one of the 13 registered massage therapy schools in Idaho, and are the only university-based program in the United States. At ISU, they offer both a technical participant and associates of applied science which articulates to a bachelor of health science. They teach to a much higher standard than the national standard minimum of 500 hours. **Ms. Beck** expressed it is their philosophy that massage therapists should have a similar health science background as any other health occupation in their college. Massage therapists usually work in one-hour increments with clients; therefore, they must have in-depth knowledge of anatomy, physiology, kinesiology, pathology, and medical terminology. Additionally, she stated ISU offers courses in theory, basic skills, equipment and supplies, assessment, treatment planning and charting, working with special populations (individuals with injuries, etc.), and research. She added that they teach business and have a very strong background in ethics and boundaries.

TESTIMONY: **Tricia Pennell**, President, Idaho Chapter of the American Massage Therapy Association (AMTA), spoke **in support of S 1295**. She stated she has gone through specialized training for working with cancer patients and currently is working with a client who is undergoing chemotherapy treatment which affects her kidneys. **Ms. Pennell** advised without her training and background, she would not be aware that she should not work on this client when her kidneys are not functioning properly due to the treatments.

Senator Vick asked if licensing would require that massage therapists who are working with cancer patients receive this specialized training. **Ms. Pennell** responded, no, however, licensing of massage therapists would be an avenue for the general public to know that there are therapists available who have had training in such specialized areas.

WRITTEN TESTIMONY: **Ryan Fitzgerald**, representing the Idaho Association of Chiropractic Physicians, presented written testimony **in support of S 1295** (see Attachment #1).

Suzanne Budge stated this is a professional organization that is changing and evolving in terms of how they fit into the health care practice and it is important to them to maintain a professional standing.

Senator Heider asked how licensing will be implemented. **Ms. Budge** responded that they have consulted with the Bureau of Occupational Licensing to ensure the legislation is implemented correctly. She noted the last sections of the bill reflect that implementation will be delayed. The board will be set up and the rulemaking process will begin July 1, 2012; other sections go into place the following year; and the grandfathering process allows for 18 months to two years before they are in place.

Senator Heider asked about the possibility of therapists having to pay multiple fees - one for State licensure and another for local dues or business fees required to conduct business in their community. **Ms. Budge** advised the legislation is intended to help provide uniformity, minimizing the statewide confusion that currently exists. They are not seeking to override business license fees; they are seeking to keep cities from having to deal with the technical implementation of required massage therapist training. In cities such as Boise, a business license could still be required; the provisions in the bill relate to licensure of massage therapists at the State level only.

Senator Schmidt asked if the requirements for massage therapy schools are similar to those for licensure of massage therapists in **S 1295**. **Ms. Budge** replied, it would be accurate to say that in 27 of the states regulating the massage therapy profession at the state level, 500 hours is the minimum requirement. Although some schools may require more than that, it is the most common standard for minimum entry.

Senator Smyser asked how enforcement would be treated if someone made a complaint. **Ms. Budge** responded that the section of the bill regarding enforcement is consistent with licensing in other areas.

Vice Chairman Broadsword commented that after the Committee's previous experiences with licensure, she has some grave concerns about certification or licensure; however, after reading the legislation and seeing the sideboards that have been added and research that has been done, she feels more comfortable with **S 1295**.

MOTION: **Vice Chairman Broadsword** moved, seconded by **Senator Schmidt**, that **S 1295** be sent to the floor with a do pass recommendation.

Senator Darrington commented that the bill seems to be boilerplate language, consistent with licensure acts the Committee has approved. He commended those who set the timeline for implementation of the bill. He anticipates it will take up to two years from this legislative session for rules review due to the time-consuming process of developing the rules and implementation of the act. He agreed with **Vice Chairman Broadsword** that there is great hesitation on the part of the Committee with regard to the unintended and unforeseen consequences of licensing.

Senator Vick stated he shares some of the same concerns already expressed, especially regarding the probable increase of costs. He believes that this will lead to more groups who feel they need licensure to legitimize their profession. For these reasons, he stated he will be voting against the bill.

VOTE: **Chairman Lodge** asked for a vote on the motion to send **S 1295** to the floor with a do pass recommendation. The motion carried by **voice vote**. **Senator Hammond** will be the floor sponsor.

S 1326 **Relating to Vocational Rehabilitation.** **Vice Chairman Broadsword** introduced **S 1326**, stating the bill is designed to phase out the State's End Stage Renal Disease (ESRD) program by June 30, 2013. The laws in place require the Division of Vocational Rehabilitation (Division) to provide financial assistance to individuals diagnosed with ESRD who are unable to pay for the cost of services. These laws were passed in 1970 when other types of financial assistance were not available to individuals with ESRD. However, a recent study by the legislative Office of Performance Evaluation (OPE), which was provided to the Committee at the print hearing for this legislation, found that Medicare, Medicaid, and private insurance provide for some or all of the costs associated with ESRD, making the original legislative intent of these laws no longer relevant.

Vice Chairman Broadsword stated that Medicare and Medicaid now cover dialysis, transplants, and related treatment costs. The OPE report provided a number of other programs and options available to those who suffer from ESRD.

Senator Nuxoll asked if there is a difference between what Medicare and Medicaid are doing versus what the Idaho program is doing to help those with ESRD. **Vice Chairman Broadsword** stated the Idaho program primarily pays for medications, transportation, and insurance premiums not covered by Medicare or Medicaid; it no longer pays for dialysis or transplants.

Senator Smyser asked what the average cost is for a person dealing with ESRD. **Vice Chairman Broadsword** deferred to **Don Alvershere**, Director, Idaho Division of Vocational Rehabilitation (Division), who stated that he believes the cost is between \$3,000 and \$4,000 per year; much of that cost is for transportation and prescriptions. Sometimes patients do have some coverage under Medicaid and Medicare; however, the Division is helping with the prescription co-pays.

Senator Schmidt commented, after reviewing the OPE Report, there appears to be difficulties in providing oversight for this program. He asked if transportation costs, which appear to be the largest part of the costs, are covered for people who are enrolled in Medicaid. **Mr. Alvershere** responded that it is his understanding that full transportation costs are not covered and that the 20 percent prescription copay is covered in full. With regard to oversight, he stated it is difficult for staff who are working toward employment-related issues, to adjust and cover these cases. They often do not have access to necessary information in a timely manner and the limited staff assigned to this project will spend only 4-5 hours per week on it. He stated efforts have been concentrated on coordinating benefits with Medicaid and Medicare.

Senator Smyser asked if the Department of Health and Welfare was given oversight of this program, would they be able to better coordinate benefits with Medicaid, track that situation and Medicaid be able to pick that up. **Mr. Alvershere** responded that it would be a lot easier for them to verify coverages.

Senator Heider asked to be recused from voting on this bill due to kidney health issues in his family.

TESTIMONY:

John Carter, representing Dialysis Patient Citizens (DPC), and a dialysis patient himself, spoke **in opposition** to **S 1326**. **Mr. Carter** stated he has been on dialysis treatment for six years and, in fact, had just come from treatment. He stated he works actively in his dialysis center in educating fellow patients, and advocating at the state and federal level. He requested, that the Committee consider not ending the ESRD program, but improve the program so that essential services remain in place for those Idahoans who need them most.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #2).

Chairman Lodge asked if Mr. Carter receives Medicare only, and if he is employed. **Mr. Carter** replied that he does receive Medicare, but not Medicaid. He stated he is not employed at present; he needs dialysis three times per week for a total of approximately 18 hours per week.

Senator Schmidt asked if he had other insurance coverage besides Medicare. **Mr. Carter** responded he does not have insurance other than Medicare. He is working on becoming transplant eligible so is looking at purchasing a COBRA plan which is very costly. **Senator Schmidt** asked if he was familiar with the pre-existing condition insurance plan proposed under the federal Patient Affordable Care Act. **Mr. Carter** replied although he works with his social worker a lot, he was not aware of the federal act.

Senator Nuxoll asked what patients would specifically be without treatment, transportation, prescriptions, etc. **Mr. Carter** responded that the program covers the co-pay costs for prescriptions and transportation to and from treatment on a weekly basis. If a patient could not get transportation, they would potentially be without treatment.

Chairman Lodge asked if he is able to drive and, if so, could he drive himself to treatments. **Mr. Carter** responded he can drive and does.

TESTIMONY: **Lydia Weaver**, John Carter's mother, spoke **in opposition** to **S 1326**. She stated that if we can, through taxes, provide first-rate medical care for prisoners in institutions, we should be able to assist law abiding people with ESRD who fall through the Medicare and Medicaid cracks.

TESTIMONY: **Amy Freeman**, LMSW, Davita Dialysis Center, spoke **in opposition** to **S 1326**. She clarified that patients who are receiving assistance in the ESRD program are not the patients who have full Medicaid which provides coverage for transportation and assistance for medications. Those people being helped are in Medicare only. **Ms. Freeman** continued that one of the first things they do is to help the patient obtain insurance coverage, whether it be through Medicare or both Medicare and Medicaid. If they are not certain of eligibility for Medicaid, they refer the patient to Medicaid directly. She advised that ESRD is chronic. Those who suffer from this disease either remain on dialysis until they can receive a transplant or they die, and very few of them receive a transplant. The assistance the ESRD program provides is invaluable, helping to ensure care in a more cost effective setting.

Senator Smyser asked if Ms. Freeman's references to the costs for medication were regarding the co-pay portion of the costs or the medications costs in general. **Ms. Freeman** responded when patients have Medicare A and B, and D for the prescription costs, there is still a co-pay requirement. Because the medications are costly, they meet "the donut hole" where they must pay out of pocket about \$2,000 before receiving Medicare Part D again. The ESRD program pays only for medications related to the cause of their kidney failure or dialysis.

Senator Nuxoll asked if travel within cities is much of a problem and if the program is set up mainly for rural areas. **Ms. Freeman** stated there is a great resource in Boise through Access transportation which is only \$2.00 each way. Outside of Boise city, and in other areas, there is no such program. Patients in rural areas typically do not use a transportation company due to the expense; they either drive themselves or have a family member drive them, so they mainly need help with the cost of gas. **Senator Nuxoll** asked if there is any possibility for help through Medicare or Medicaid. **Ms. Freeman** stated if the individual has income over the limitation for Medicaid, they receive no assistance from Medicaid.

Senator Heider asked who wants this program to go away. **Ms. Freeman** replied it is her understanding that Division of Vocational Rehabilitation does.

Senator Schmidt asked if **Ms. Freeman**, as a social worker, is aware of the pre-existing condition federal pool insurance. **Ms. Freeman** responded that she is not but would appreciate receiving information about that; however, most insurances do not cover transportation costs - the only transportation coverage available is through Medicaid. **Senator Schmidt** asked if she was aware of the projected change in eligibility for Medicaid. **Ms. Freeman** replied that she is not aware of projected changes but would like to know about those changes.

Senator Schmidt stated he has treated patients in rural areas and, depending upon their proximity to a dialysis center, there is often a choice between hemodialysis and peritoneal dialysis, which can be used at home. He asked if **Ms. Freeman** has seen patients in rural areas making use of peritoneal dialysis and would she say there is a preponderance of peritoneal dialysis vs hemodialysis. **Ms. Freeman** responded for those people in rural areas, they do recommend the use of peritoneal dialysis. She added that not everyone is capable of doing so as it involves inserting a catheter into the abdomen; any type of surgery that impacts the peritoneum would prohibit a patient from being eligible for peritoneal dialysis.

Hannah Crumrine, Office of Performance Evaluations (OPE), stated OPE did not necessarily recommend that the ESRD program be terminated. They identified three options for the legislature to consider; however, the Governor's Office is in support of terminating the program and set the effective date of June 30, 2013.

Vice Chairman Broadsword advised there are currently 98 participants in the ESRD program with 30 on a waiting list. Ninety percent (90%) of current participants are not Medicaid eligible. There is no means test for anyone to be on the program at this time. Other programs are available to provide some help to those suffering from ESRD. She further stated that the state does not provide financial assistance for any other single disease, bringing into question the fairness of the current ESRD program. **Vice Chairman Broadsword** advised she proposed this legislation because of the OPE report and at the Governor's recommendation that the program be phased out. She requested the Committee send **S 1326** to the floor with a do pass recommendation.

MOTION:

Senator Vick moved, seconded by **Senator Nuxoll**, that **S 1326** be sent to the floor with a do pass recommendation.

Vice Chairman Broadsword expressed her concern for those currently receiving benefits from the ESRD program, but believes it is a matter of fairness to all Idaho citizens that we spend tax dollars fairly, among all people who suffer from diseases and not just one disease or another.

Senator Schmidt commented he will be voting in favor of **S 1326**. In the text of the bill it appears that assistance that is currently being provided will be encouraged in the phaseout program so that people will not be simply cut off. He stated it appears that this, unfortunately, has been an ineffective support program; we need to provide better support, we can, and he believes we shall. **Senator Schmidt** referred to the changing landscape of health care and stated, in his opinion, most of the people who are currently eligible for these benefits will be eligible for Medicaid support.

VOTE:

The motion carried by **voice vote**. **Vice Chairman Broadsword** will sponsor **S1326** on the floor.

Chairman Lodge adjourned the meeting at 5:00 p.m.

Senator Lodge
Chairman

Lois Bencken
Secretary

Diana Page
Assistant Secretary