

MINUTES
HOUSE BUSINESS COMMITTEE

- DATE:** Monday, February 27, 2012
- TIME:** 1:30 PM or Upon Adjournment
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith (30), Rusche, Cronin
- ABSENT/
EXCUSED:** None
- GUESTS:** Joie McGarvin, America's Health Insurance Plans; Russell Westerberg, Westerberg & Associates; Jim Genetti, Idaho Association of Health Underwriters; Tom Iberle and Kelly Anderson, Society of St. Vincent dePaul; Woody Richards, Insurance Lobbyist; Wayne Hoffman, Idaho Freedom Foundation; George Gersema, Employers Resource; Marnie Packard, Pacific Source; Kathie Garrett, Idaho Academy of Family Physicians; Georgia Siehl, Donna Daniel, Bill Michels, Tom Donovan and Bill Deal, Department of Insurance; Julie Taylor, Blue Cross of Idaho; Shad Priest, Regence Blue Shield, Elizabeth Criner, Pfizer
- Chairman Black** called the meeting to order at 2:20 p.m.
- MOTION:** **Rep. Smith (30)** made a motion to approve the minutes of February 21 and February 23. **Motion carried by voice vote.**
- H 471:** **Roy Eiguren**, representing Asurion Insurance, presented **H 471**, dealing with insurance for cell phones and other portable electronics. He said this is an attempt to make uniform the manner in which insurance policies are monitored and regulated by the Department of Insurance. Mr. Eiguren said he had vetted the bill with the Department. He introduced **Stephen McDaniel** who represents Asurion Insurance, the only company selling insurance policies on cell phones. Mr. Eiguren said these policies cover all kinds of hazards and cost about \$9 per month.
- Stephen McDaniel**, representing Asurion Insurance Services, testified **in support of H 471**. Mr. McDaniel said this creates a uniform and consistent model for consumers in Idaho. He said similar legislation is being pursued in 26 states this year, and more will be doing so next year.
- Responding to committee questions, **Mr. McDaniel** said his company's insurance policies do cover internal malfunctions like battery failure; the average premium is between \$4 and \$6 per month per device. Mr. McDaniel said Square Trade offers service contracts which are limited to inherent defects in materials or workmanship. He testified that service contract providers are subject to less regulation than insurance providers. He said it is his opinion that service contracts would not cover such things as theft or full immersion in water. He said Square Trade's model would continue unchanged after passage of this bill. Mr. McDaniel said his company has had very few complaints about the quality of replacement products provided under their insurance coverage.
- Mr. McDaniel** said during the development of this legislation all stakeholders were brought to the discussion, and he stressed this is not an attempt to exclude or reduce competition. He stated there are several companies involved in selling these insurance policies, including Liberty Mutual, CNA, American Bankers, and Asurion, as well as some smaller regional companies. Mr. McDaniel said this bill will create a corporate-level license, similar to a rental car limited lines license.

Bill Deal, Director of the Department of Insurance, was asked to respond to further committee questions. He said his department did review the legislation. He testified those who wish to sell insurance on electronic devices would be evaluated under the same criteria as other applicants and would have to meet the same requirements with regard to financial stability. Mr. Deal said he does not know of any complaints about insurance products offering coverage for electronic items such as phones. He said the effort is to reach uniformity in what this product is and how it is being sold. He stated the Department of Insurance will handle future complaints through its Consumer Affairs Department, as it does with other complaints about insurance products. He also stated the Department could have oversight with regard to premium rates for these products.

Tom Donovan, Deputy Director of the Department of Insurance, was asked to delineate the differences between a company regulated under this legislation and a company like Square Trade, which is underwritten by Amtrust, a large insurance company. Mr. Donovan pointed out that according to Idaho Code service contracts are not subject to the insurance code. Similar to a warranty, a service contract covers damage resulting from normal wear and tear or defects in material or workmanship.

Mr. Donovan was asked whether the Department of Insurance would have regulatory authority over a device that was purchased outside the state of Idaho, for instance, in Washington. He said the Department would look at the location of the risk and therefore Idaho regulation would apply to such a transaction. Asked whether these insurance policies would cover Ipads as well as cell phones, he said it was his belief that they do cover those items.

Mr. McDaniel responded to a question about whether a consumer would qualify for a "quantity discount" in premiums if he or she owned and insured more than one device. He said there is no discount for multiple devices. Asked why Canada is mentioned, he said it was to allow a Canadian resident to enter information for claims. Mr. McDaniel testified the required information provides for regulatory oversight to make sure all people have been properly vetted. He noted that Asurion, his company, and another company, Asurent, are the two largest players in the field; they are licensed insurance agencies in the state who work with wireless carriers to set up insurance programs on the devices they sell.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in opposition to H 471**, noting that his organization had given this bill a freedom index score of minus 6. Mr. Hoffman said it creates a regulatory burden and imposes specific record keeping and training requirements. He said he is also concerned about the rigid requirements for insurance adjuster licensing, including names and addresses, social security numbers, background checks and other information. Mr. Hoffman said the bill will place excessive control on companies insuring electronic devices and he noted there has been no rallying cry to regulate this industry. He said achieving uniformity across all states is not a good reason to regulate something and said there is no rush to enforce these regulations.

Responding to questions, **Mr. Hoffman** said he does believe the state should play some role in regulating insurance, but in this instance there is no consumer protection issue. He said he is not aware of any companies who think they may be hindered by this legislation, but he thinks it is important to speak up for the free market.

Vice Chairman Henderson assumed the chair and conducted the remainder of the meeting.

Mr. Donovan was asked to clarify the type of information required of applicants for insurance licensing. He said the Department requires some background checks and biographical information on the officers and directors of insurance companies, although fingerprints may not be required of those individuals. Mr. Donovan responded to a question about whether it would be possible to purchase a rider on one's homeowner's insurance to cover portable electronic devices, saying he believes that would be possible.

Answering further questions, **Mr. Donovan** said if a person is truly selling an insurance policy that would cover electronic devices, and not simply a service contract, then that person ought to be licensed as an insurance producer. He explained that H 471 proposes the creation of a vendor license under which an entity could be licensed; that entity would be responsible for the conduct of the individuals selling its insurance products. Mr. Donovan explained this bill would allow for a new type of limited lines insurance for portable electronics vendors, which would be less regulatory, not more regulatory.

Mr. McDaniel stated that the sale of this type of insurance is incidental to the sale of cell phones. This bill creates a limited lines insurance license allowing salesmen to sell only these kinds of policies.

Mr. Eiguren offered to have the bill held in committee, subject to the call of the Chair.

MOTION: **Rep. Bilbao** made a motion to **HOLD H 471** in committee, subject to the call of the Chair.

Bill Deal, Director of the Department of Insurance, offered a further clarification on **H 471**. He said if the Department of Insurance is licensing an insurance company, the company would be required to submit biographical and other information on its officers. An insurance agent simply needs to provide his or her fingerprints in order to facilitate a background check.

H 420: **Bill Deal**, Director of the Department of Insurance, presented **H 420**, which deals with audited financial statements for third-party administrators (TPAs). Mr. Deal said smaller TPAs should be granted an exemption from the requirement to provide audited financial statements. Companies who will not be required to provide audited statements will be required to post a 10% or \$20,000 bond. Mr. Deal said he is not aware of any opposition to this legislation.

Georgia Siehl, Bureau Chief and Chief Examiner at the Department of Insurance, was recognized to respond to a question about whether there are specific rules set up to define "hardship." She said that in general small third party administrators (TPAs) do not have audited financial statements. Ms. Siehl said the Department takes into account the size of a TPA's assets as well as the business they write in Idaho. Ms. Siehl said prior to the law being changed a couple of years ago, audited financial statements were not required but a bond was required. The model law was adopted which required audited statements, and the Department had no ability to waive that requirement. They have found there are some small TPAs who felt this requirement was a very big financial burden on them. Ms. Siehl said if this exception for small firms is not implemented, such firms may not want to operate in Idaho.

Bill Michels, Deputy Chief Examiner at the Department of Insurance, was recognized to respond to a question about how "good cause" is determined and how the cost of a bond compares with the cost of an audit. Mr. Michels said the Department will accept "reviewed" or "compiled" financial statements from smaller companies in lieu of audited financial statements. He said a company would have to make a case as to what represents a hardship. He said this exception is targeted to small businesses for whom audited financial statements represent a significant expense.

MOTION: **Rep. Cronin** made a motion to send **H 420** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Cronin** will sponsor the bill on the floor.

H 421: **Bill Deal**, Director of the Department of Insurance, presented **H 421**, saying it amends current law dealing with service orders and notices given by the Director. Mr. Deal said this bill will allow him to use e-mail when sending notices. When the transmission of such notices is done by e-mail, both parties have to agree to that method. He said there is no known opposition to this change.

MOTION: **Rep. Collins** made a motion to send **H 421** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Collins** will sponsor the bill on the floor.

H 422: **Bill Deal**, Director of the Department of Insurance, presented **H 422**. Mr. Deal explained that fees and taxes collected by the Department of Insurance are deposited and updated daily with the Treasurer's Office through an electronic accounting system. Currently there is a requirement that the Department file a certified report on funds collected and submitted to the State Treasurer. During the Department's audit last year, the auditor suggested this requirement could be eliminated since the funds are tracked electronically. Mr. Deal said there is no opposition to this change.

MOTION: **Rep. Chadderdon** made a motion to send **H 422** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Chadderdon** will sponsor the bill on the floor.

Bill Deal, Director of the Department of Insurance, was recognized to present general information about his Department and their work. Mr. Deal stated the Department operates to regulate the insurance industry in the state of Idaho under Title 41 of Idaho Code. The Legislature sets policy and the staff at the Department makes decisions based on that policy. Mr. Deal introduced **Georgia Siehl**, Chief Financial Examiner, who has been Chief Examiner for the past 12 years. Ms. Siehl is a CPA and also a Certified Financial Examiner (CFE). Her primary responsibility is to make sure the Department meets all National Association of Insurance Commissioners (NAIC) requirements. Mr. Deal then introduced **Bill Michels**, CPA and CFE, Deputy Chief Examiner, who supervises the team that examines domestic insurance companies for financial stability and other factors. Mr. Michels is a 12-year employee of the Department. Mr. Deal also introduced **Donna Daniel**, a 23-year employee who is Supervisor of the Rates and Forms Section, one of the busiest divisions at the Department.

H 423: **Bill Deal**, Director of the Department of Insurance, presented **H 423**. He explained that the Department has regulatory authority to administer and review health insurance rates.

First, **H 423** allows the Department to make certain information available that was previously considered proprietary, such as the explanation given for an increase in premium rates. **Mr. Deal** said that beginning last September any increase in premiums greater than 10% must be submitted to the Centers for Medicare and Medicaid (CMS). The Department of Insurance can either post the justification for such increase on its website or it can link to the CMS website in order to give the public access to the information. Once the justification is sent into CMS, the Department reviews the rate increase, makes a judgment on its appropriateness, and either approves or disapproves it. Mr. Deal said CMS cannot override that decision; the rate approval authority stays within the state.

Second, this legislation will incorporate language containing definitions and standards that are already in the property/casualty section of Idaho Code, namely, to specify that "rates shall not be excessive, inadequate or unfairly discriminatory."

Mr. Deal said this is the same language used as a standard in many states. He testified that since 2008 all health insurance rates have been or are being reviewed. He said the NAIC model law is the basis for Idaho's review process, but Idaho statutes and rules are the primary basis. Mr. Deal said the recent Patient Protection and Affordable Care Act (PPACA) did not mandate any rules. He testified that an actuary determines whether rates are "excessive," meaning that a company will achieve an inordinate level of profit, or whether they are "inadequate" meaning the company could not maintain operations, or whether they are "unfair or discriminatory," which could mean that a company charges different rates for a man than for a woman.

Mr. Deal concluded his testimony by saying that the Department has had an effective review process for many years. He noted the second primary function of the Department is to assure that companies are solvent and financially stable so they can pay for claims.

Responding to committee questions, **Mr. Deal** said for small companies and individuals the new medical loss ratio allows 20% for company expenses and requires 80% to be used to pay claims. For large companies, the ratio is 15% for expenses and 85% for claims payment. If income exceeds those figures, the difference has to be refunded to policy holders.

Bill Michels was recognized to respond to a question about how the determination is made on whether 20% is adequate to pay company expenses. He testified that his department examines insurance companies once every five years to determine their solvency; they also look at corporate governance, market conduct, claims payment, management procedures and practices. He said the major issue with companies is actuarial soundness, which includes past history and rate adequacy, among other factors. Mr. Michels said the "refund" of excess funds is in the form of a dividend check that is returned to the policy holder.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in opposition to H 423**. Mr. Hoffman said after reading the bill and its Statement of Purpose, he does not think the bill is entirely transparent. He said this legislation references 45 CFR 154.215, which is the federal rule derived from the Public Health Service Act. Mr. Hoffman said this was added by Section 1003 of the Patient Protection and Affordable Care Act (PPACA), and thus this legislation codifies in Idaho Code the rules written through PPACA. He testified if a rule's existence is simply stated in statute, then the statute changes in accord with that rule any time that rule changes, which is unconstitutional.

Mr. Hoffman testified this bill creates arbitrary language and sets it in Code; it is not specific as to what qualifies as "unreasonable" or "excessive." He said this language is already in Code, but it has done nothing to help with insurance rates. Mr. Hoffman is concerned that Idaho is delegating away the Director's authority and is putting language into Idaho Code that is derived from legislation the state is trying to block, namely, PPACA. He believes this bill is unconstitutional, is an affront to federalism, and increases control of the private sector.

George Gersema, Chief Executive Officer of Employees Resource in Boise, testified **in opposition to H 423**. He said he is philosophically opposed to this legislation. He stated there used to be a provision that dealt with information that should be considered proprietary and secretive, but now the Director is required to make information available, which means information is subject to public disclosure. Mr. Gersema said insurance carriers may say they are okay with that provision, but it may give pause to companies who were anticipating entering the Idaho market because they may not want to disclose information to competitors. Mr. Gersema also has concerns about the rating standards. He said there currently is adequate regulatory authority in Idaho Code.

In response to committee questions, **Mr. Gersema** said the government has not proven itself to be very good at determining excess or inadequate pricing. He said he ran a self-directed health plan for over 20 years so he is very familiar with actuaries, claims, reserves, and other aspects of the health insurance industry. Mr. Gersema said he does see a role for the Department of Insurance to determine whether premiums are too high or too low, but he believes the current regulation is more than adequate to allow the Department to do so.

Shad Priest, representing Regence Blue Shield, testified **in support of H 423**, nothing that he previously worked for the Department of Insurance for 15 years, including serving as Deputy Director. Mr. Priest said the primary change has nothing to do with the Director's authority to regulate rates; that authority has been in place since at least 1995. He said insurance companies file rates and the Department reviews them; this legislation will not change that. He stated that the use of the terms "excessive, inadequate, discriminatory" is common throughout the country, and this language is already in Idaho Code. The insurance industry is comfortable with that language. Mr. Priest said the primary change effected by this legislation is to add some transparency to the rate-filing process. Idaho's current law states that all rate information is proprietary. This legislation will open that information by allowing the Department to disclose a company's justification for its rate increases.

In response to a committee question, **Mr. Priest** said the referenced language appears in Idaho Code Section 41-3915, Subsection 6. He said the terminology has been there since the Managed Care Act of 2001. Asked whether the state is giving away its regulatory powers if this bill is passed, Mr. Priest said insurance carriers are required to follow these rules regardless of whether the state adopts this approach. He said if Idaho does lose regulatory oversight, it will have to deal with the federal government, which may be politically driven, on rate questions.

Julie Taylor, Director of Government Affairs for Blue Cross of Idaho, testified **in support of H 423**. Ms. Taylor said it is important that the Department of Insurance remain the primary regulator. She stated the terms excessive, inadequate, and discriminatory are meant to protect consumers. Ms. Taylor gave an example of a company, Lincoln National, which operated as a managed care organization in Idaho in the early 1990s. Because they "low-balled" rates, they ultimately did not have enough reserves to pay claims. Blue Cross took in the policy holders from Lincoln National but had to raise rates in order to cover the risk pool.

Asked whether she thinks there is a problem in Idaho with excessive, inadequate or discriminatory practices, **Ms. Taylor** said she is not the party who could best answer that question.

Marnie Packard, representing Pacific Source Health Plans, testified **in support of H 423**.

Tom Donovan was recognized to comment on the concern that the Legislature may be delegating authority to the federal government. Mr. Donovan explained that the Department is faced with the constitutional challenge and possible repeal of PPACA. In order to comply with the Public Records Act, agencies need to make information public. The Department will have a problem doing this if the legislation does not pass. If the information is filed with the federal government and someone asks for access to it, the Department needs to be able to give out the information. Mr. Donovan said the bill was drafted with the phrase "otherwise provided by law" because the exemption provided under federal law is not quite as broad as that available to the Director. He also said PPACA does not require everything that Idaho Code requires to be made public. For instance, one would not find all actuarial information or rate-setting information, but the Department would have that information on file.

Bill Deal was recognized to offer concluding testimony. He stated **H 423** is important legislation particularly for the health insurance industry in Idaho. He said the rate standard, which comes from the NAIC rate manual, is used throughout the country. Mr. Deal said the Department is simply trying to make sure that insurance companies operating in Idaho are solvent, are charging valid rates, and have adequate reserves to pay claims. He said his Department is trying to maintain its own effective rate review process, as dictated by Section 41 Idaho Code.

Responding to further committee questions, **Mr. Deal** said the Centers for Medicare and Medicaid Services (CMS) has decreed to insurance companies that if their rates increase by 10% or more, they have to send the justification to CMS. That information goes on the CMS website. The Idaho Department of Insurance then determines the rate adequacy, and that decision is sent to CMS. CMS has no authority to change the rate; the Department's decision is attached to the justification submitted by the company. Mr. Deal said if the Department does not have the authority to deal with that rate information, which is proprietary, the federal government takes over and makes the decision.

MOTION: **Rep. Rusche** made a motion to send **H 423** to the floor with a **DO PASS** recommendation. **Rep. Crane** requested a roll call vote on the motion.

During discussion on the motion, **Rep. Barbieri** said he is not sure the bill is drafted constitutionally because the reference to federal rules does delegate the Legislature's authority. He said it seems as if Idaho is trying to comply with the federal act to keep the federal government from pre-empting the state's authority.

Speaking in support of the motion, **Rep. Rusche** said Idaho should not turn over management and oversight of Idaho's health industry to the federal government. He said we will not assert Idaho sovereignty by turning power over to the federal government.

Rep. Bayer expressed his concern with the two instances in the bill citing federal regulations, noting that it seems to embed federal law into Idaho Code and that it seems to be fairly open-ended. He said he will not support the motion.

ROLL CALL VOTE: **Vice Chairman Henderson** called for a roll call vote on the motion to send **H 423** to the floor with a **DO PASS** recommendation. **Motion failed by a vote of 6 AYE and 9 NAY, with 2 absent and excused. Voting in favor of the motion: Reps. Collins, Bilbao, Chadderdon, Thompson, Smith (30), and Rusche. Voting in opposition to the motion: Reps. Henderson, Crane, Patrick, Bayer, Palmer, Barbieri, DeMordaunt, Guthrie, and Batt. Reps. Black and Cronin were absent and excused.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 4:40 p.m.

Representative Frank Henderson
Vice Chairman

MaryLou Molitor
Secretary