

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Wednesday, March 14, 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:** 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.

**MINUTES:** **Chairman Lodge** called the meeting to order at 3:15 p.m., welcomed those in attendance, and apologized for the late start due to a prior presentation.

**MINUTES APPROVAL:** **Senator Schmidt** moved, seconded by **Vice Chairman Broadsword**, that the minutes from February 14, 2012 be approved. The motion carried by **voice vote**.

**GUBERNATORIAL NOMINATION VOTE:** **Curt Fransen** of Garden City, Idaho, was appointed Director of the Department of Environmental Quality to serve a term commencing February 24, 2012, and serving at the pleasure of the Governor. **Senator Bock** moved, **seconded** by **Senator Nuxoll**, to send the gubernatorial appointment of **Curt Fransen** as Director of the Department of Environmental Quality to the floor with the recommendation that it be confirmed by the Senate. The motion carried by **voice vote**. **Senator Bock** will carry the nomination on the floor.

**H 569:** **Relating to Uniform Controlled Substances. Representative Loertscher, District 31**, was welcomed to the Committee by **Chairman Lodge**. He said this was a very simple piece of legislation to clarify the reporting requirements of the filling of prescriptions by veterinarians. He advised current legislation requires all controlled substances dispensed for humans be filed with the Board of Pharmacy electronically in a format established by the board or by other method as required by board rule. He indicated this change would exempt veterinarians from having to report electronically.

**Senators Smyser** and **Bock** expressed appreciation for the changes in this bill.

**TESTIMONY:** **Dr. Les Stone**, veterinarian from Idaho Falls, representing the Idaho Veterinarian Medical Association said the current rules could be a burden to veterinarians in that they would have to generate useless information for the Prescription Monitoring Program (PMP). He indicated the PMP program was designed for humans and this bill will eliminate the reporting requirement for veterinarians dispensing controlled substances. He stated veterinarians do not dispense quantities that are likely to be abused and the data obtained from veterinarians did not justify the burden placed on small veterinarian practices. **Chairman Lodge** thanked **Dr. Stone** for the work he had done to help resolve this problem. .

**TESTIMONY:** **Mark Johnston**, Executive Director, Board of Pharmacy (Board), said the Board had not had time to meet; however, he had talked with the Chairman of the Board and there is a feeling the Board would not be opposed to the change.

**Vice Chairman Broadsword** asked **Mr. Johnston**, how he felt about **Dr. Stone's** assertion that the information gathered from veterinarians is not needed. **Mr. Johnston** advised the Board first considered the veterinarians' requests at a public hearing last October and at that time they did make the determination that they believed it was important for the Board to know what controlled substances were being ordered by veterinarians so they might be able to identify illegal activity. He said they have only had three cases in the past ten years of a patient taking an animal to multiple doctors for medication.

**MOTION:** **Senator Smyser** made a motion, **seconded** by **Senator Nuxoll**, that the Committee send **H 569** to the floor with a do pass recommendation. The motion carried by **voice vote**. **Senator Smyser** will sponsor **H 569** on the floor.

**H 439AA:** **Relating to Dispensing of Controlled Substances Prescriptions.** **Mr. Johnston** advised that Board policy requires collection of certain data on controlled substances that are dispensed. He stated the data is available in the Board's Prescription Monitoring Program (PMP). He noted that practitioners licensed in states other than Idaho often provide medical services to Idaho residents, especially in Idaho's neighboring states. This legislation would clarify that the Board is allowed to provide PMP data to licensed practitioners, whether licensed in Idaho or another state. **Mr. Johnston** explained that the Board obtained a Federal grant to create a system that would allow interstate data sharing, thus allowing Idaho pharmacists and practitioners to access other PMP data. A requirement of the grant would be reciprocal access.

Additional changes would allow pharmacists PMP access when providing pharmaceutical care services and would allow the Board to block or deny access in very limited and defined situations. **Mr. Johnston** said this change will also allow the Board to distribute unsolicited information to pharmacists and practitioners when the release of information may be of assistance in preventing or avoiding inappropriate use of controlled substances.

**Mr. Johnston** indicated this legislation further establishes a misdemeanor penalty for failing to safeguard login information. He advised that subsequent to the hearing on this bill in the House, he met with the Idaho Medical Association (IMA), who pointed out that a prescriber who is a victim of identity theft also could be guilty of a misdemeanor under the bill. Thus, **H 439's** current language does not meet the Board's intent. The Board is only concerned with willful misconduct and gross negligence. He suggested that Section 37-2726, subsection (7), of the bill be further amended by inserting the words "intentionally shares or recklessly" before the words "fails to safeguard his user account."

With the support of IMA, **Mr. Johnson** respectfully requested that H439 be sent to the 14th Order for amendment.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #1).

**Senator Schmidt** asked if he was seeing a patient for the first time as a practicing physician and had his nurse use the PMP to look up information on the patient, would that be seen as a violation under this bill? **Mr. Johnston** replied that the Board, by policy, allows practitioners to name one designated agent. The designated agent receives their own login and password ID and doesn't share the login information of the prescriber. He noted that PMP data is a small amount of data compared to that stored in the Health Data Exchange, and they will further evaluate the level of restriction to make sure it is appropriate.

**TESTIMONY:** **Dr. Russ Newcomb**, representing the Idaho Medical Association, said the Association **supports** sending **H 439** to the 14th order for amendment.

**MOTION:** **Senator Schmidt** moved, seconded by **Vice Chairman Broadsword** that the Committee send **H 439** to the 14th Order for amendment. The motion carried by **voice vote**.

**H502aa:** **Relating to Uniformed Controlled Substances.** **Mr. Johnston** advised that *Idaho Code*, Section 37-2714 mandates that the Board update their schedules of controlled substances annually. He indicated this proposed legislation accomplishes the statutory requirement to update the schedule. He stated that a review by the Legislative Services Office (LSO) found one grammatical error and four typos and suggested correcting the reference to federal law. The Board accepted those suggestions and also is requesting the removal of HCG from the controlled substance schedule. The Board found HCG has no potential for abuse. Lastly, he said, the wording of last year's spice synthetic, was intended to be used as inclusively as possible, since the manufacturer's change the structure of the chemicals. **H 502aa** was amended in the House to simplify the statute by removing the specific chemical structures/side chains currently listed and replacing them with the "to any extent" language. **Mr. Johnston** said that less specific wording would control several new, emerging synthetic substances that would come to the attention of ISP chemists. He requested **H 502aa** be sent to the floor with a do pass recommendation.

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

**Senator Schmidt** said he understood HCG was not a controlled substance, but he said it could be abused. **Mr. Johnston** said HCG was often used in conjunction with other steroids as part of the regime of therapy, but in itself, did not fit the definition of a controlled substance.

**TESTIMONY:** **David Sincerbeaux**, with the Idaho State Police Forensic Services Department, spoke **in support** of **H 502aa**.

**Chairman Lodge** asked if he is satisfied that this will cover new substances that are being abused. **Mr. Sincerbeaux** said this would cover some of the ones seen in the coming year, but they will probably have to come back next year as the substances are reformulated. **Chairman Lodge** thanked **Mr. Sincerbeaux** for coming to the hearing and for the work he does in this area.

**MOTION:** **Senator Schmidt** moved, **seconded** by **Vice Chairman Broadsword** that the Committee send **H 502aa** to the floor with a do pass recommendation. The motion carried by **voice vote**.

**H 609:** **Relating to Public Assistance Law.** **Representative Janice McGeachin**, District 32, advised this legislation restores cuts to Medicaid made in **H 260** during the 2011 Legislative Session. The services being restored relate to preventative dental services, duplicative skill training for individuals with mental health and developmental disabilities, and the removal of tiered individual budgets for adults. **Representative McGeachin** said for the most part the thinking and objectives of **H 260** have been successful; however, feedback from constituents and better economic times have brought about a desire to restore some of those reductions and **H 609** is a culmination of those efforts.

She indicated this legislation will provide participants on the aged and disabled waiver and the developmental disability waiver access to dental services that reflect evidence-based practice. She further advised that mental health providers may not provide training for skills included in the individual's developmental disability plan, but may provide services related to the individual's mental illness that requires the specialized expertise of mental health professionals, such as management of mental health symptoms, teaching coping skills related to mental health diagnosis, assisting with psychiatric medical appointments and educating individuals about their diagnosis and treatment. The final change is the removal of tiered individual budgets for adults.

**Representative McGeachin** indicated this is still a work in progress and a small restoration, but it helps to address the more egregious unintentional consequences of **H 260**. The fiscal impact is \$1.5 Million to the state General Fund.

**Senator Nuxoll** asked if this was just for adults. **Representative McGeachin** said this bill is for adult services.

**Chairman Lodge** stated children's benefits were not cut in **H 260**.

**Vice Chairman Broadsword** said she wanted to clarify that mental health and disability services were for those with a dual diagnosis. They were for people who had both a mental health illness and a developmental disability. She stated they currently must choose between mental health or disability services and under this bill they do not have to make that choice. She said by combining the suicide hotline and the dental benefits for the disabled, they had addressed the worse concerns that came out of **H 260**.

**Senator Vick** asked how much of the \$1.5 million was for dental and how much was for the other part. **Vice Chairman Broadsword** said it was \$653,000 for the dental benefits and about \$900,000 for the dual diagnosis. She said they were general fund dollars and they have a federal match at the 70/30 rate.

**TESTIMONY:**

**Katherine Hansen**, Executive Director, Community Partnerships of Idaho, which is part of the consortium for Idahoans with Disabilities, spoke **in support of H 609**, she explained that once a year they have a strategic planning session and one of the things that was on their minds was the impact of **H 260**. They discussed how they could, as a community, advocate on behalf of those that were most significantly impacted. She said they created a vision board and explained it to the Committee. **Ms. Hansen** thanked everyone for what they had done.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #3).

**TESTIMONY:**

**Kathie Garrett**, who serves on the Board of Directors for NAMI (National Alliance on Mental Illness), Idaho and is Chair of Partners in Crisis, spoke **in support of H 609**. She thanked the Committee for its consideration of this bill and indicated it's passage would greatly benefit those approximately 600 individuals that were required by last year's legislation to make a choice that severely and negatively impacted their already challenging quality of life.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #4).

**Chairman Lodge** read the names of others in attendance who indicate **support for H 609: Bill Benkula; Paul Leary; Jim Baugh; Elizabeth Criner**, on behalf of the Idaho State Dental Association, and **Marilyn Sword**, on behalf of the Developmental Disability Council.

**MOTION:** **Vice Chairman Broadsword** moved, **seconded** by **Senator Smyser**, that the Committee send **H 609** to the floor with a do pass recommendation. The motion carried by **voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**Chairman Lodge** indicated she and **Vice Chairman Broadsword** had also drafted a similar bill before discovering the House was hearing this legislation, and she thanked **Vice Chairman Broadsword** for her work on this legislation. She noted **Vice Chairman Broadsword** would not be returning to the Senate next year and thanked her for all the dedication she has shown to the Health and Welfare Committee over the years.

**ADJOURNMENT:** **Chairman Lodge** adjourned the meeting at 4:10 p.m.

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Senator Lodge  
Chairman

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Lois Bencken  
Secretary