

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Monday, March 19, 2012

TIME: 1:30 pm or Upon Adjournment of the House

PLACE: Room EW41

MEMBERS: Chairman Black, Vice Chairman Henderson, Representatives Collins, Bilbao (Reynoldson), Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith (30), Rusche, Cronin

**ABSENT/
EXCUSED:** None

GUESTS: Thomas Donovan, Deputy Director, Department of Insurance; Wayne Hoffman, Idaho Freedom Foundation; George Gersema, Employers Resource; Julie Taylor, Blue Cross of Idaho

Chairman Black called the meeting to order at 2:45 p.m.

Rep. Smith (30) made a motion to approve the minutes of March 13, 2012. **Motion carried by voice vote.**

H 652: **Thomas Donovan**, Deputy Director, Department of Insurance (DOI); explained that **H 652** followed **H 423**, also presented by the DOI, which failed in committee on February 27, 2012. He said that **H 652** seeks to amend two sections of the insurance code: Title 41, Section 41-4706, regarding small employer health benefit plans and Section 41-5206, regarding individual health benefit plans. He further explained the changes and amendments: (1) page 3, line 44, changing "4" to "5," (2) insertion of the words "or as otherwise applicable" on page 3, line 46 and page 6, line 12. He said each of the two sentences to be amended provides an exemption from public disclosure of the health insurers' rating information, which is considered "proprietary and trade secret information." The existing language in each section also contains exceptions to the exemption from public disclosure. They are: (1) where a violation of the chapters 47 or 52 from the Patient Protection and Affordable Care Act (PPACA) occurs, (2) where the health carrier agrees, and (3) as otherwise ordered by a court of competent jurisdiction.

Mr. Donovan indicated there are three differences between **H 423** and **H 652**. In **H 652**, the reference in Chapter 60 from PPACA dealing with immunization assessments has been dropped, and the references to providing a general standard that rates shall not be "excessive, inadequate, or unfairly discriminatory" have been dropped in response to the committee's concern that the language was overly broad. In **H 652**, the language has also been deleted that gave specific reference to federal regulations that may or may not be ruled constitutional in PPACA. In conclusion, Mr. Donovan stated that adding the clause "or as otherwise provided by applicable law" to the other three listed exceptions for the release of health insurer rating information will help remove confusion for the agency, should it receive a public records request. He said it will also help increase transparency and access to Idaho insurance information.

Responding to questions from the committee, **Mr Donovan** said that in **H 423** specific sites and specified rating differences had been listed, both state and federal. However, in **H 652** those have been removed. In response to a question regarding the legal basis for responding to an unconstitutional law, he said there is no court order that PPACA is unconstitutional. He also said the Governor's office gave permission to the insurers to address legislation for an effective rate review

program as required by Health and Human Services, the entity given jurisdiction to administer PPACA.

Julie Taylor, Director of Government Affairs for Blue Cross of Idaho, was called upon to answer a question regarding rate review. She spoke **in support of H 652**. She noted that Blue Cross of Idaho had a rate regulator but that Idaho did not have what was needed to comply with PPACA on the issue of an effective regulator. She said when an insurance company's rates rise by more than 10% for medical coverage in any area, it is necessary to have a rate review. The insurance industry wants one entity to deal with and it would be preferable to deal with an Idaho government agency instead of trying to get a review from the federal government.

In response to a question from the committee, **Ms. Taylor** said what is in statute today effectively meets the rate review except for one step: It does not make it public.

Responding to a further question, **Mr. Donovan** said that Idaho may be out of compliance. To a question about the Centers for Medicare and Medicaid Services removing Idaho's power to review rates, Mr. Donovan said there is a standard and if an insurance carrier exceeds that standard by more than 10% there is an enforcement mechanism, kind of like a "scarlet letter." The carrier must wear the label "unreasonable" on its website for three years. He said either state or federal government can do the rate review and Idaho wants the state to be the designated reviewer and the provider of information for public disclosure.

Wayne Hoffman, Executive Director of the Idaho Freedom Foundation, testified **in opposition to H 652**. He noted although the bill is an improvement, he disagrees with the interpretation of the statute and said there is ambiguity between what the public records reveal and Section 3 of PPACA. He said the public records law does not force the state to include items deemed public by the federal government. He argued that the rate review does not allow the government to say rates are too high, they can only "opine" and that does not force insurers to change the rates. His final objection concerned the enshrining of the federal law into Idaho Code.

In response to committee questions regarding free market principles for consumers, **Mr. Hoffman** said the bill violates free market principles and sets the state on a path of requiring the same public disclosure of gas stations, grocery stores, farms, etc. He said the government should allow the consumer to do his/her own search of insurance rates and not compel private industry to disclose information relative to how prices are set.

George Gersema, Chief Executive Officer of Employees Resource in Boise, testified **in opposition to H 652**, stating that the bill was not about transparency, but it was about PPACA. He opposed the state government doing the bidding of the federal government and he said the public disclosure referred to in **H 652** is in violation of his rights. He stated that Kathleen Sebelius, US Secretary of Health and Human Services, just released rules for the implementation of PPACA. He showed the committee the 646-page document that guides that implementation. Mr. Gersema concluded by quoting Thomas Jefferson, who warned against the hordes of government administrators stealing constitutional freedoms.

Chairman Black called on **Mr. Donovan** to close debate. He said the purpose of **H 652** is to broaden the existing statute to include public disclosure if required by other applicable law. He asked the committee to pass the legislation.

**ORIGINAL
MOTION:**

Rep. Rusche made a motion to send **H 652** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE
MOTION:**

Rep. Crane made a substitute motion to **HOLD H 652** in committee.

During the discussion on the motions, **Rep. Barbieri** said the DOI is saying PPACA is law and we need to comply. He stated the law was unconstitutional and everyone needs to step back and wait for the court decision before passing another law.

Rep. Rusche argued against the substitute motion, stating the appeals court still finds PPACA constitutional. He said that until it is overturned, we cannot ignore it. That is nullification. We should allow our DOI to regulate rates. **Rep. Bayer** said the phrase "applicable law" is concerning because it could be applied to almost anything. **Reps. Guthrie** and **Cronin** spoke in favor of the original motion. They argued that **H 652** was brought before the committee by the regulated parties who do not have the luxury of choosing which laws to facilitate, and if the law is judged unconstitutional, any of the amendments to the Idaho Code could be re-legislated.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

Rep. Crane requested a roll call vote on the substitute motion. **Motion passed by a vote of 9 AYE, 8 NAY. Voting in favor** of the motion: **Reps. Henderson, Collins, Bilbao, Crane, Bayer, Palmer, Barbieri, DeMordaunt, and Batt. Voting in opposition** to the motion: **Reps. Black, Chadderdon, Patrick, Thompson, Guthrie, Smith, Rusche, and Cronin.**

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 4:10 p.m.

Representative Max C. Black
Chairman

Jean Vance
Secretary