

## MINUTES

# HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, January 17, 2013
- TIME:** 1:30 P.M.
- PLACE:** Room EW05
- MEMBERS:** Chairman Hartgen, Vice Chairman Anderson(31), Representatives Loertscher, Anderst, Hancey, Harris, Holtzclaw, Mendive, Romrell, VanOrden, King, Woodings
- ABSENT/  
EXCUSED:** Representative Loertscher
- GUESTS:** Megan Ronk, Dennis Porter and Gloria Mabbutt, Department of Commerce; Pam Eaton, Idaho Retailers Association and Idaho State Pharmacy Association; Kris Ellis, Benton Ellis; Mindy Montgomery, Jane McClaran, Patti Vaughn, Tom Limbaugh and Lindsay Egbert, Industrial Commission; Ed Hawley, Office of Administrative Rules; Donna Weast, Department of Human Resources; John Foster, Kestrel West
- Chairman Hartgen** called the meeting to order at 1:31 p.m.
- MOTION:** **Rep. Anderst** made a motion to approve the minutes of January 15, 2013. **Motion carried by voice vote.**
- DOCKET NO. 28-0205-1201:** **Jeff Sayer**, Department of Commerce, presented **Docket No. 28-0205-1201**. He explained that this Pending Rule affects the Rural Community Block Grant Program. This program deals with money that is given and dedicated specifically for rural communities. The total amount is roughly \$750,000 per year. Inside the larger grant are Gem Grants, which allow communities to work on small projects throughout each year. The rule change would increase the population of eligible cities from 10,000 to 25,000. Rural cities with a population between 10,000 and 25,000 are experiencing private sector job growth opportunities, but lack the financial ability or economies of scale to help fund public infrastructure needs for private business expansion. The current rules related to this program have not been updated in approximately ten years, and increasing the limit is essentially keeping up with population growth and right sizing the Rural Community Block Grant Program, to capture critical communities that need help. Mr. Sayer stated that the change would not necessarily add new cities from the original creation of the program. Communities that would specifically benefit from the change are Burley, Blackfoot, Hayden, Jerome and Kuna.
- In response to questions, **Mr. Sayer** stated that in developing the rule change, a list of all the rural communities in the State was compiled, and data was examined to determine what would most benefit Idaho's communities. The words "generally less" in the rule could allow some flexibility in defining a community's population, however, the grantors do try to stay consistent with the intent of the Grant, which is to assist rural communities.
- Dennis Porter**, Department of Commerce, responded to a question, stating that currently no new applications have yet been received.
- In response to additional questions, **Mr. Sayer** said that funding comes from the Department of Commerce's budget. It is a dedicated grant fund. The Department of Commerce wants to ensure that the Rural Community Block Grant Program is able to assist communities successfully. As they look at getting monies out to rural Idaho communities, they want to deploy the funds to appropriate locations. If the population limit is not raised, they may not be able to get money to the communities that truly need it. There has not been a problem with giving this grant money

to communities. The Department also oversees the giving of six to seven million dollars in Housing and Urban Development (HUD) monies annually, which are dedicated to infrastructure. The Rural Community Block Grant monies come from the State General Fund. In the early 2000s, the Grant received roughly \$3 million from the State General Fund, and currently the amount is \$750,000. The Department is not requesting any additional funding. The Department is asking for the ability to consider as many rural communities as possible and to have more flexibility in distributing help to Idaho's smaller communities. If the rule is rejected, some small communities would not be eligible for Grant assistance. There is no intent to take money from the smallest of Idaho's rural communities. Individual persons may have differing definitions of "rural".

Responding to additional questions, **Mr. Sayer** stated that there are several resources available to communities and companies. In making decisions on grant awards, those resources are considered. The Department of Commerce works closely with cities and counties to determine how to best meet the needs of communities. He discussed the City of Ucon, where the Rural Community Block Grant was able to assist in bringing in a fairly large employer, benefitting the community. Cities apply for the Grant with formal proposals. Building infrastructure and bringing in jobs are the two major components that the Department looks for in approving grants.

**Chairman Hartgen** reminded the committee that a Pending Rule must be rejected by both houses, or it will go into effect.

**MOTION:**

**Rep. Hancey** made a motion to approve **Docket No. 28-0205-1201**. **Motion carried by voice vote.** **Rep. Harris** requested to be recorded as voting **NAY**.

**DOCKET NO.  
28-0206-1201:**

**Jeff Sayer**, Department of Commerce, presented **Docket No. 28-0206-1201**. He said that the State intends to provide incentive funding for Idaho companies that commit private resources toward the process of attracting federal Small Business Innovation Research (SBIR) Grants. Applying for these grants is a fairly extensive process that often requires consultancy and can be expensive. If a small business is able to successfully acquire the first phase of a SBIR Grant, it can generally be awarded the other phases of the Grant and operate successfully. This Pending Rule adds the definition of "State Coordinator". The State Coordinator awards grant and incentive funds to eligible small businesses to assist them in applying for SBIR Grants. Small business proposals must meet program requirements. Eligibility for grant and incentive funds is determined through an extensive review and evaluation of proposals by the State Coordinator and other professionals, who together form an evaluation team. If the small companies are awarded a over certain amount of SBIR Grant money, they will be required to reimburse the State. Language in the rule has been changed to reflect that proposals will be sent to the State Coordinator and not a federal agency so that proposals can be evaluated before they go to a federal agency. In the section addressing the grant application process, there is a change to clarify that proposals must now be sent to the State Coordinator and to provide a deadline for that filing. This deadline precedes the federal filing deadline to allow time for proposals to be evaluated before they go to a federal agency.

In response to questions, **Mr. Sayer** stated that the changes and additions were recommended by the Department of Administration. There is a State Coordinator inside the Department of Commerce. Under this program, the Department of Commerce becomes a coach to small businesses that are seeking these grants. The program already exists but has had limited exposure across the State. There are already applications in process. The language changes do not adjust the way the program operates; they are merely clarifications.

**Rep. Anderson(31)** requested to be recorded as stating that he applauds the efforts of **Mr. Sayer** and the Department of Commerce in this area.

**Mr. Sayer** responded to additional questions, stating that the request for reimbursement is a good faith agreement and they have not had difficulty with repayment. Under the federal program, companies applying for the SBIR Grants must have 500 employees or fewer.

**MOTION:** **Rep. VanOrden** made a motion to approve **Docket No. 28-0206-1201**. **Motion carried by voice vote.**

**DOCKET NO. 17-0204-1201:** **Jane McClaran**, Industrial Commission, presented **Docket No. 17-0204-1201**. She stated that this Pending Rule is a housekeeping measure that has resulted from the passage of **H 570** during the 2012 Legislative Session. That legislation, proposed by a representative of the Idaho Fraternal Order of Police, amended IC §72-1104 on compensation and costs associated with the Peace and Detention Officer Temporary Disability Reimbursement Fund. The Industrial Commission administers that fund and the language added under this rule mirrors the language used in the amended statute, including the July 1, 2015 sunset clause.

In response to questions, **Ms. McClaran** stated that this new provision will be in place for a three-year period. On July 1, 2015, only this single provision will sunset. The rest of the rule will remain in place. She believes that when the rule was proposed, the fiscal impact was unknown. Funding comes from fines from misdemeanor and felony convictions, and has been increasing. These fines are distributed to many entities. When this was originally implemented there was a desire to review in three years after funding was established. The rule expands the criteria under which an employer would be eligible to seek reimbursement. Injuries would have had to occur during the line of duty for eligibility.

**Rep. King** clarified that this is a pilot project that was passed in the House State Affairs Committee last year. **Rep. Anderst** stated an example was given to him: A police officer was accompanying someone to the hospital and was injured while on duty. His injury would be covered under the Fund.

In response to additional questions, **Ms. McClaran** stated that an officer's on-duty status is in existing language. Officers are eligible for workers' compensation benefits like any other employee. The proposal before the Committee uses the same language that is currently in statute. This deals with workers' compensation claims. In order to have a workers' compensation claim, an employee must have been working at the time of the injury on which the claim is based.

**MOTION:** **Rep. King** made a motion to approve **Docket No. 17-0204-1201**. **Motion carried by voice vote.**

**DOCKET NO. 17-0209-1201:** **Patti Vaughn**, Industrial Commission, presented **Docket No. 17-0209-1201**. She stated that Idaho Code § 72-803 requires physician payments for workers' compensation medical services to be based on the Resource Based Relative Value Scale (RBRVS) reimbursement method used by the Centers for Medicare & Medicaid Services (CMS). There are two components under this scale: (1) A numerical relative value unit assigned by CMS to each coded procedure weighted according to the work, practice, and malpractice expenses associated with providing that service; and (2) A monetary conversion factor. The allowable amount for a particular medical service under the fee schedule is its assigned relative value unit multiplied by its monetary conversion factor. The RBRVS scale was designed with a single conversion factor. In order to preserve access to care to certain specialists who refused to treat injured workers, the Commission's early fee schedules adopted multiple conversion factors. Although multiple conversion factors pacified those specialists, other physicians noted the distortion of the relative value scale when using multiple conversion factors. The Commission recognized the need to reduce both the disparity among the conversion factors as well as the number.

**Ms. Vaughn** went on to state that in 2007, the fee schedule included 35 conversion factors. The fee schedule today has seven. The changes to the physician fee schedule were determined in collaboration with representatives from the medical and insurance communities participating on the Healthcare Subcommittee of the Commission Citizens' Advisory Committee. The Subcommittee endorsed a proposal to eliminate two conversion factors, but subsequent written testimony received from some affected specialists reported the reduction was too severe and would again jeopardize access to care. The Commission wants to reduce both the number of conversion factors as well as the disparity between the specialties without jeopardizing access to care for Idaho's injured workers. Changes include an overall inflationary increase of 2.3%, a reduction (-3.6%) of the Surgery Group 1 conversion factor from \$140 to \$135, a reduction (-3.9%) of the Surgery Group 2 conversion factor from \$129 to \$124, a convergence of the Surgery Groups 3 & 4 conversion factors to \$88.54, an increase (+4.3%) to the Medicine Group 1 conversion factor from \$47 to \$49, and an increase (+2.2%) to the Medicine Group 2 conversion factor from \$68.50 to \$70.

In response to questions, **Ms. Vaughn** stated that this was a negotiated rule to some extent. There were meetings with representatives from the medical and insurance industries and the Subcommittee was formed, however, there was not formal negotiated rulemaking. This was not dealt with as a Fee Rule because it deals with fees between providers and insurance companies and is regulatory in nature.

**Ed Hawley**, Office of Administrative Rules, stated that this is not a Fee Rule. It was not a negotiated rule.

**Patti Vaughn**, Industrial Commission, responded to additional questions, stating that she received written testimony from several hand doctors who stated that the reduction in fees was too steep and could cause them to no longer be able to treat workers' compensation patients. She has not looked at the Medicaid Fee Schedule. She says that she believes that the fee schedule being used here is much higher.

**Ms. Vaughn** went on to explain the pharmacy portion of the Proposed Rule. She said that the Commission proposes a new pharmaceutical fee schedule using the benchmark of the Average Wholesale Price (AWP). The AWP is the price reported by the pharmaceutical manufacturers to industry publications as a benchmark for cost to the dispensing provider for each drug as identified by its National Drug Code (NDC) number. Although the AWP is the price reported as paid by pharmacies, it is not an exact benchmark as pharmacies may have negotiated volume discounts or received rebates from the manufacturer that are not reflected in the AWP. Approximately 32 states are using the AWP as the benchmark for their workers' compensation pharmaceutical fee schedules. Under the proposed pharmacy fee schedule, the standard for the acceptable charge is the Average Wholesale Price plus a \$2 dispensing fee for brand drugs, and a \$5 dispensing fee for generic drugs. Compound drugs would be allowed the sum of the AWP for each drug included in the compound medicine, plus a \$5 dispensing fee and a \$2 compounding fee. Over-the-counter drugs would be allowed a reasonable charge without dispensing fees. The pharmaceutical fee schedule would also be applicable to physicians dispensing medications following the warnings of industry organizations including the National Council for Compensation Insurers (NCCI), the Workers' Compensation Research Institute (WCRI), and the International Association of Industrial Accidents Board. Their research has revealed physician dispensing of pharmaceuticals to be a significant cost driver to the workers' compensation systems in multiple other states, resulting in increased cost to employers. Dispensing physicians are often paid a much higher amount than a pharmacy for the same medication. Pharmaceutical repackaging companies, who are not the original manufacturers, are assisting physicians with repackaging drugs

from their original form, assigning a new NDC code, and then repricing the drugs, often at markedly elevated prices. WCRI reports indicate some drugs may be marked up as much as 60% to 300%. The Commission has received no specific information to indicate similar behavior by Idaho physicians, but available data does indicate an additional cost to employers of at least 30% for repackaged drugs. As other states adopt stricter regulations on physician dispensing, it may cause Idaho to be considered a friendly market to the repackagers who market to physicians. The Commission believes it is prudent to adopt preventative measures to avoid increases in premiums for Idaho employers. Ms. Vaughn said that the Commission received testimony from some Idaho physicians' offices that they have resorted to using repackaging services as a necessary means to get paid an amount at or above their cost. Reimbursement to physicians who dispense pharmaceuticals would be the amount equivalent to what would be allowed under the pharmacy fee schedule, although without the dispensing fees. Drugs that have been repackaged from the original manufacturer's form would be allowed the AWP for the medicine prior to repackaging as identified by the original manufacturer's NDC number. Ms. Vaughn said that it is important to note that the rule does not prohibit physicians from dispensing medications, it merely equalizes the reimbursement between pharmacies and dispensing physicians. She said that the Commission has no reason to believe that injured workers will be denied appropriate care as a result. Research conducted in a state where similar reform was passed showed no significant reduction in physician dispensing patterns. Medication compliance is also not expected to be affected since injured workers are most often prescribed medications for pain relief. There is no available evidence suggesting a higher compliance rate with physician vs. pharmacy dispensed medications.

**Ms. Vaughn** stated that changes are also proposed to the required coding sets for medical billing. CMS will require providers to migrate from the ICD-9 to the ICD-10 diagnostic coding set in October 2014. The changes in this rule will help to keep providers and payers using a common coding language.

In response to questions, **Ms. Vaughn** said that in looking at available data, many pharmacies are under contract with Pharmacy Benefit Managers (PBMs) and those contracts will not be disturbed by this rule change. The Commission does not expect to see a marked change in reimbursement to pharmacies. A public hearing was held last fall and physicians expressed concern about their ability to continue dispensing medications.

**Pam Eaton**, Idaho State Pharmacy Association, stated that AWP is being phased out nationwide. Medicaid and private providers are moving toward something that is "a little more accurate". She stated that dispensing fees offered under this rule are "quite low," and that, on average, a pharmacy spends \$11 to \$11.50 to dispense a medication. Additionally, workers' compensation claims take longer to process and pharmacy staff members spend additional time searching out information for claimants. She said that workers' compensation insurance also takes longer to pay claims and is prone to rejecting claims or requiring resubmission of claims. She stated that the Idaho State Pharmacy Association would like an opportunity to work with the Industrial Commission to address problems with this Pending Rule.

In response to questions, **Ms. Eaton** stated that her concern is with Section 033. of the Proposed Rule. It is her understanding that the Legislature can elect to strike a single rule section.

Responding to additional questions, **Patti Vaughn**, Industrial Commission, stated that the Commission would be happy to work with the Idaho State Pharmacy Association to develop or change the fee schedule. There is generally a three-week comment period following the publication of rule changes in the administrative bulletin.

**Ed Hawley**, Office of Administrative Rules, responded to a question. He stated that the three week comment period allows 7 days to request a public hearing, followed by 14 days to turn in public comments.

**Patti Vaughn**, Industrial Commission, stated that the Industrial Commission would be more than happy to meet with any parties with information to share. A new Temporary Rule can be adopted at any time, however, any changes for next year need to be worked on with stakeholders and ready for proposal before next August.

**Ed Hawley**, Office of Administrative Rules, responded to a question. He stated that the Commission can not come back with a new or changed rule this year.

**Tom Limbaugh**, Industrial Commission, stated that the Commission would like the opportunity to research adopting a new Temporary Rule to adjust the dispensing fees, which could go into effect at the same time as this Pending Rule.

**MOTION:** **Rep. Hancey** made a motion to approve **Docket No. 17-0209-1201**. **Chairman Hartgen** stated he was in doubt regarding the voice vote.

**ROLL CALL VOTE:** Roll call vote was requested. **Motion failed by a vote of 3 AYE, 8 NAY, 1 Absent/Excused.** **Voting in favor** of the motion: **Reps. Hancey, King and Woodings.** **Voting in opposition** to the motion: **Reps. Anderson(31), Anderst, Harris, Holtzclaw, Mendive, Romrell, VanOrden and Chairman Hartgen.** **Rep. Loertscher** was absent/excused.

**MOTION:** **Rep. Anderst** made a motion to hold **Docket No. 17-0209-1201** until time certain, Wednesday, January 23, 2013. **Motion carried by voice vote.** **Rep. King** requested to be recorded as voting **NAY**.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:13 p.m.

---

Representative Hartgen  
Chair

---

Mary Tipps  
Secretary