

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

- DATE:** Tuesday, February 12, 2013
- TIME:** 3:00 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey and Schmidt
- ABSENT/ EXCUSED:** Senator Bock
- 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.
- CONVENED:** **Chairman Heider** convened the meeting at 3:01 p.m.
- MINUTES:** **Chairman Heider** asked for the approval of the January 30, 2013 Senate Health and Welfare Committee meeting minutes.
- MOTION:** **Vice Chairman Nuxoll** moved to approve the January 30, 2013 minutes as written. The motion was seconded by **Senator Martin**. The motion carried by **voice vote**.
- MINUTES:** **Chairman Heider** asked for the approval of the February 5, 2013 Senate Health and Welfare Committee meeting minutes.
- MOTION:** **Senator Schmidt** moved to approve the February 5, 2013 minutes as written. The motion was seconded by **Senator Lakey**. The motion carried by **voice vote**.
- Chairman Heider** introduced Dick Armstrong, director of the Idaho Department of Health and Welfare, to do a presentation on the Affordable Care Act's (ACA) impact on Idaho Medicaid.
- PRESENTATION:** **Mr. Armstrong** said, just as a disclaimer, he really does not like anything about this law, but his job is to enforce the law of the land and he was there to do the best for the state of Idaho. In June 2012, the United States Supreme Court decided to make Medicaid expansion under ACA optional to the states. Governor Otter responded by putting together a 15-member workgroup that Armstrong chairs. The workgroup hired two national consultants to collect data. **Mr. Armstrong** said the workgroup's report and recommendations were given to Governor Otter in December 2012. (See Attachments 3a and 3b for presentation.)
- DISCUSSION:** **Senator Hagedorn** asked where the subsidies come in and from and how the tax credits work – do they only work through the Health Insurance Exchange? **Mr. Armstrong** said they come through the Health Insurance Exchange in the form of a payment to the insurance company. Individuals have to go through a step-by-step process that starts with determining eligibility. **Senator Hagedorn** asked if a static number was used in the final calculations or if an increase over the next ten years was calculated that into the numbers. If so, how would that change the chart? **Mr. Armstrong** said the workgroup and consultants did not try to anticipate the population growth in Idaho. **Senator Guthrie** asked about the 3.5 percent premium tax the federal government charges to run the Exchange. **Mr. Armstrong** said, to his understanding, the 3.5 percent premium tax is a surcharge that the federal

government will add onto the premiums – they're going to charge that, that's a surcharge, they're going to add that on the premiums. **Mr. Armstrong** said rules on this are still being written. **Senator Guthrie** asked if the state does not do the optional part, will there be people now in the mandatory coverage that will then not be covered. **Mr. Armstrong** said, yes, some people will no longer be eligible under the Modified Adjusted Gross Income (MAGI) rules and, then, some who will become eligible.

Senator Lakey asked, with the burden of proof shifted to state, could anybody come in and put in whatever bologna they want on the application and have it then be up to the department to verify the information is incorrect? **Mr. Armstrong** said yes, but the department is given many anti-bologna tools that include searching via Homeland Security to determine citizenship and using the Internal Revenue Service (IRS) to look for sources to verify income. Also, a data hub is going to be made available to bring all the federal sources of information into one search engine so that the department can source-verify statements made on applications. **Senator Lakey** asked if there is a point, if an individual declines to provide additional information and/or documentation, that the burden to verify sources will still be put on the department. And, what protections does the department have? **Lori Wolff**, Division of Welfare Deputy Administrator, said in the verification plans that states put together it will state what will be done in those situations. There will be a sequence of events that states must follow. First, check to see if information can be verified. If there is information that cannot be verified, then state officials can request documentation. If applicants do not provide that, state officials are able to deny a Medicaid application for failure to provide documentation. **Senator Lakey** asked if the mandatory expansion will have a positive impact on the Community Alternatives Program (CAP) fund. **Mr. Armstrong** said while there always is a chance that it would occur, he doesn't think it would be that significant.

Senator Hagedorn asked how many people are going to be left out in the cold – who will not have a choice of the Children's Health Insurance Program (CHIP), Medicaid, Medicare – regardless of what kind of exchange Idaho chooses.

Mr. Armstrong said the estimate is right at 25,000 at this moment in time.

Vice Chairman Nuxoll expressed concern about applicants giving up all their information to determine eligibility on the Exchange, through the MAGI rules, and she asked at what wage a family of four would be the cut off. **Mr. Armstrong** said 400 percent of the federal poverty guideline for a family of four is about \$90,000 a year. **Mr. Armstrong** said if an individual does not want to reveal anything personal, "don't knock on our door." **Vice Chairman Nuxoll** asked if those people could still get insurance if they don't ask for a subsidy. **Mr. Armstrong** said anyone can buy insurance through the open market like is done today. There is nothing to stop an individual from buying insurance from an independent agent through their Idaho-based insurance companies.

Chairman Heider thanked **Mr. Armstrong**, said it was very helpful to have his perspective on the health insurance exchange and that the committee is going to look forward to a lot more discussion on it in the future. **Chairman Heider** introduced Roger Hales, of Naylor & Hales, P.C., to present four House Bills to the committee.

H 32

Mr. Hales said **H 32** proposes a straightforward addition to the Idaho State Board of Psychologist Examiners and will allow the board to promulgate rules setting forth standards and requirements for use of communications technology in the practice of psychology. (See Attachment 4a.)

MOTION: **Vice Chairman Nuxoll** motioned to send **H 32** to Senate floor with a do pass recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senator Schmidt** volunteered to carry **H 32** to the Senate floor.

H 33 **Mr. Hales** said **H 33** makes a simple change to the limited permit issued by the Idaho State Occupational Therapy Licensure Board. (See Attachment 5a.)

Senator Schmidt asked if a permit is granted before the applicant takes the licensing test. **Mr. Hales** said his understanding is that an applicant files an application, which establishes they've got the education and experience, and then would apply for a limited permit. The board would grant that and authorize the applicant to take the examination. The applicant then would have six months to fully complete and pass the examination – or, they could come back and request the board to extend the permit if they had some type of good cause.

MOTION: **Senator Lodge** motioned to send **H 33** to the floor of the Senate with a do pass recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. **Senator Lodge** volunteered to carry **H 33** to the Senate floor.

H 35 **Mr. Hales** said **H 35** accomplishes three things that deal with the authoritative rights of the Idaho State Board of Social Work Examiners as well as the board's ability to discipline. (See Attachment 6a.)

Senator Schmidt asked if a licensee fails to comply with a board order in another state, would that be grounds for disciplinary action in the state of Idaho. **Mr. Hales** said that is not the intent of the bill - it's meant to only deal with the Idaho Board of Social Work Examiners. **Senator Lakey** asked if the bill is focused and if it is an order that has entered in a disciplinary action. **Mr. Hales** said that was exactly right and that the bill is very limited.

MOTION: **Senator Lakey** motioned to send **H 35** to the floor of the Senate with a do pass recommendation. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**. **Senator Lakey** volunteered to carry **H 35** to the Senate floor.

DISCUSSION: **Senator Hagedorn** said Senator Schmidt brought up a very valid point on failure to comply with a board order and that the bill does not specify which board. **Senator Hagedorn** said he thinks it is a very valid concern and suggested Mr. Hales clarify the wording just to make sure, if there is a challenge in courts, the courts do not have any possible way to be confused. **Mr. Hales** said the word 'board' was obviously meant in the context of the Idaho State Board of Social Work Examiners, but that he understood the concern and would share it with the board and follow up on it. **Chairman Heider** said he wanted to remind the committee that the bill is related to the Idaho Board of Social Work Examiners, which is identified at the top of the heading, and that is the board referred to in the bill's paragraphs. **Senator Hagedorn** said he appreciated that very much. However, line 22 says "comply with a board," not "comply with the board," which would be consistent with the same board that the rest of the statute is working under. **Senator Hagedorn** said the wording is what opens the bill up to a bit of confusion.

H 36 **Mr. Hales** said **H 36** accomplishes two things that deal with the authoritative rights of the Idaho State Board of Examiners of Nursing Home Administrators. (See Attachment 7a.)

Senator Martin asked, in regard to the \$1,000 fee requested with the bill, if the board currently has any fee for this category of licensees. **Mr. Hales** said it is a fine the board is unable to impose at this time and the statute would authorize that. **Senator Martin** asked who the licensee is referred to – a company; an individual? **Mr. Hales** said the board only licenses individuals, so it would be a licensed nursing home administrator – an individual. **Senator Martin** asked what 'each' would indicate in the wording of the bill – each violation or each day a licensee is in violation? **Mr. Hales** said it would have to be a separate violation – doing something more than once. **Mr. Hales** said the grounds for discipline call for pretty significant types of conduct.

Senator Guthrie asked if the fine went away if a violation was written and later found out to be inaccurate. **Mr. Hales** said licensees are entitled to constitutional due process and explained the process. Any time the board receives a complaint, it is investigated. If it is determined that there is some evidence of a potential violation, then that matter conceivably is the subject of a formal complaint. That licensee is provided notice of the formal complaint and it is tried before a hearing officer so that the licensee has the opportunity to defend themselves – they can bring their lawyer, etc. The hearing officer, a licensed attorney, will determine whether there is substantial evidence in the record to establish a violation. That recommendation is then provided to the board and the licensee has another opportunity to argue that the hearing officer was incorrect in the decision made. The board will take a position based upon all the testimony and all the evidence presented and take a position on whether or not there was a violation. If the board's determines there was a violation, the licensee has the ability to argue a type of penalty to be imposed. Once the board takes a position on the violation and the discipline, the licensee has to appeal that decision to a district judge – to establish that the board acted consistent with the constitution, consistent with state law and that there was substantial evidence in the records to support the board's position. **Mr. Hales** said this is not something in which the board simply writes a ticket and fines somebody, the board is obligated to go through a full constitutional process in order to discipline a licensee. **Senator Guthrie** asked what kind of revenue the board would have seen if the bill would have been in place over the last three years. **Mr. Hales** said, although he did not have that information available that day, he would be happy to provide it for the committee's review. **Mr. Hales** said he was aware that there was at least one investigation that was brought to the board. **Mr. Hales** said he believes the board ultimately dismissed that matter this past year because it did not feel there was sufficient evidence.

Senator Lakey asked if the board would consider recouping its fees if an individual was found in violation and why that qualifier was not in the language. **Mr. Hales** said that is the intent for a violation and it is the qualifier – meaning the board would have to find the violation in order to order an award of costs and fees. **Mr. Hales** said that is consistent with the way the language is written in other statutes and, when it comes to the award of costs and fees, it is also governed by the Administrative Procedures Act (APA) and the Attorney General's rules on dealing with the APA. **Mr. Hales** said he cannot envision the board pursuing this but in the circumstance where an individual has found to have violated that section of law. **Senator Lakey** said he was still concerned that the qualifier is not in the bill and asked about the \$1,000 fine being similar to other agencies and boards. **Mr. Hales** said it is actually a lot less than some boards out there. The medical board can go up to \$10,000 and the nursing board might have gone up to \$2,500, but most boards certified with the Bureau of Occupational Licenses have authority to issue a fine of up to \$1,000.

MOTION: **Senator Schmidt** motioned to send **H 36** to the floor of the Senate with a do pass recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**, with **Senator Lakey** and **Senator Martin** voting nay. **Senator Schmidt** volunteered to carry **H 36** to the Senate floor.

Chairman Heider asked if Senator Lakey and Senator Martin wished to be recorded. **Senator Lakey** and **Senator Martin** said yes.

Chairman Heider said **H 34** was noticeably absent and asked Mr. Hales to explain why. **Mr. Hales** said there were interested parties on that bill who have expressed some concerns. **Mr. Hales** said the bill could be brought before the committee next year.

PRESENTATION: **Chairman Heider** introduced Elisha Figueroa, Administrator of the Office of Drug Policy, and Mark Johnston, Executive Director of the Board of Pharmacy, to do a presentation relating to prescription drug abuse issues.

Ms. Figueroa said she felt privileged to stand before the committee to talk about the prescription drug issue in Idaho and what the prescription workgroup is currently doing to address that. **Ms. Figueroa** said that in addition to Mr. Johnston, Anthony Nelson – a pharmacy student from Idaho State University and a member of the workgroup – will speak during the presentation. Prescription drug abuse is the nation's fastest growing drug problem, as identified by the Office of National Drug Control Policy. It has also been identified by the Centers for Disease Control (and Prevention) as a national epidemic. Unfortunately, Idaho is not protected from this issue. **Ms. Figueroa** said the most commonly abused medications are opioids or pain killers, as well as depressants and stimulants. A disturbing fact and trend is that those drugs are very commonly abused by – and are the drug of choice of – 12 and 13 year olds. **Ms. Figueroa** said the workgroup believes that is because of the availability. Those kinds of medications are available in almost everyone's medicine cabinets. Up until this point, most people thought they were fairly safe and have not locked them up and safeguarded them the way that they maybe should have. (See Attachments 8a and 8b.)

Mr. Nelson said he is the president of a group called Generation Rx. The group primarily combats prescription drug abuse several different ways, primarily through a 50-minute educational presentation that is shown to kids throughout the areas where the university is located – there is a chapter in Meridian and another in Pocatello. Additionally, the group does online presentations through the Idaho Digital Learning Academy – an online school that helps the group reach out to different communities in the rural areas that are out of reach due to financial reasons. **Mr. Nelson** described the members of Generation Rx as front line soldiers for groups like DrugFree Idaho, working big events and talking about prescription drug abuse to kids. The reason why Generation Rx is so involved is because of the alarming statistics coming out. **Mr. Nelson** said there are two stories that hit home to him regarding prescription drug abuse. Both centered on people who – either for fun or because of a lack of knowledge – mixed anti-anxiety medication with alcohol, went to sleep and never woke up. **Mr. Nelson** said Generation Rx members approach the prescription drug situation from a knowledge aspect and their presentation focuses on basic pharmacology. For example, members will tell high school students about what happens when a benzodiazepine or a depressant, mixed with alcohol, can affect the area of the brain responsible for breathing. It depresses it so much that, basically, when you go to sleep you forget you are supposed to breathe and you die. **Mr. Nelson** said Generation Rx's association with Ms. Figueroa's workgroup is really valuable because it provides resources for statistics and it allows them to know what is going on in the entire state. Also, it

helps give Generation Rx direction – they know where the state is headed and help to reach the goals of the state.

Ms. Figueroa said one of the incredible things about the workgroup is that it is made up of pharmacy students, pharmacists, healthcare providers – who understand the science behind this issue – social workers, parents and law enforcement officers – who do not understand all the ins and outs of how exactly those chemicals are reacting with the body. **Ms. Figueroa** said it is nice to be at a table where all those folks can come together, have discussions and work out what types of strategies that may or may not be successful.

Mr. Johnston said he is of member of the workgroup and would like to further explain the Prescription Monitoring Program (PMP), which the Board of Pharmacy is statutorily required to maintain for Idaho. (See Attachments 9a, 9b, 9c and 9d.)

DISCUSSION:

Senator Guthrie asked about the extent in which schools are being worked with.

Ms. Figueroa said the workgroup worked with statewide coalitions a couple of months ago and gathered the type of information and curriculum being used in the local schools. There is not a common curriculum being used statewide and not every school is providing information about prescription drug abuse. Generation Rx's program has been very successful but it's not statewide yet and that is something the workgroup is looking into. The workgroup is also watching to see what kind of evidence-based program is available for prescription drug abuse; there are several evidence-based programs that touch on several different substances but very little on prescription drugs. There are a couple programs that are being developed and/or improved that will highlight prescription drug abuse. **Senator Hagedorn** asked Mr. Johnston about the link between the PMP database and law enforcement to be able to go in and investigate abuse happening. **Mr. Johnston** said law enforcement only has the ability to access the system if they have a case number, which means they have already discovered a specific abuser and are requesting the PMP information. However, the Board of Pharmacy does have the ability to pass on unsolicited information to law enforcement and have done so.

Senator Hagedorn asked if it is routine to go through the PMP database and find abusers. **Senator Hagedorn** said with only 70 percent of individuals being linked into the PMP and only 10 percent using it, it seems that is not an effective use of the database. **Senator Hagedorn** said having someone run through the database to find profiles of abusers seems to be a much more effective methodology than following and chasing abusers from pharmacy to pharmacy, hoping someone will turn them in. **Mr. Johnston** said the board believes the most effective use of the system is to not create the doctor shopper in the first place, but to have physicians use the PMP before even prescribing medication. **Mr. Johnston** said he thinks the country is up to eight or twelve states mandating physicians use the PMP before they prescribe.

Ms. Figueroa thanked the committee for the opportunity to speak and said the Office of Drug Policy is always available to answer any questions on prescription drug abuse or any other drug-related topics.

CONFIRMATION HEARING:

Chairman Heider announced the confirmation hearing of Jay F. Kunze to the Hazardous Waste Facility Siting License Application Review Panel to serve a term commencing March 30, 2012 and expiring March 6, 2015. **Chairman Heider** asked Mr. Kunze to tell the committee about himself.

Mr. Kunze said this would be his third or fourth term with the Hazardous Waste Facility Siting License Application Review Panel. **Mr. Kunze** said he came to Idaho from the East Coast about 55 years ago after getting his education. He worked at the Idaho National Laboratory (INL) for about 20 years. In about 1973, he decided INL should get involved in developing Idaho's geo-thermal resource and was involved in leading the drilling in the first two geo-thermal wells. That resulted in creating heating systems for some of the buildings in downtown Boise, including the Capitol. **Mr. Kunze** said he also started the Raft River Project which the Department of Energy eventually had to abandon because they did not have the water rights for it – even though he had insisted the Department of Energy needed to get those from the state. The site has since been developed by U.S. Geothermal and is delivering about ten megawatts to Idaho Power. **Mr. Kunze** said most of his career's work has been in the nuclear field and that he is a very strong advocate for it because it is a non-greenhouse gas way of developing and producing energy/electricity, it is safe and Idaho has enough of that resource to produce all of its electricity for the next 1,500 years without mining anymore uranium. **Mr. Kunze** said officials just do not seem to have the fortitude to develop the research needed to build new reactors. **Mr. Kunze** said he is vitally interested in and concerned about the environment, what is being done to the planet and how it is being treated. **Mr. Kunze** said he is half-time retired and the one course he teaches this year is Energy and the Environment. He is married and has three sons, all graduates of Idaho State University.

DISCUSSION:

Senator Lodge asked what changes Mr. Kunze has seen for the better out at the site in Grand View. **Mr. Kunze** said the site has added additional pits and the panel has made trips out there each time to see what was being done. **Mr. Kunze** said he is quite impressed by the way that site is handling the waste that is brought in from all over the nation. **Mr. Kunze** said he originally thought the site would handle only Idaho's waste – but the state's waste is probably just a few percent of what is being brought in. The site is doing a real service for the entire nation. Other than expanding the site, there has not been anything that would give him concern. **Mr. Kunze** said the site very thoroughly monitors the waste coming in and if there is a problem, they deal with it before putting it into the pits. **Senator Martin** asked Mr. Kunze if he said he was an environmentalist who believes in nuclear energy. **Mr. Kunze** said that would be exactly right. **Senator Hagedorn** said he was in awe of Mr. Kunze's resume, thanked him for continuing to serve on the panel and asked him to describe the Aircraft Nuclear Propulsion program he was involved in as a nuclear engineer from 1959 to 1962. **Chairman Heider** said Mr. Kunze could respond if that information was not classified. Mr. Kunze said, to his knowledge, it has all been unclassified. **Mr. Kunze** said he joined that program straight out of school and it was really exciting. The idea was to put an airplane up in the sky that would stay there for weeks or months off the Russian coast, ready to take a nuclear weapon into Russia should they declare war on us. President John F. Kennedy cancelled it shortly after he became president because he felt the U.S. already had nuclear missiles that could deliver nuclear warheads to Russia, including via submarines, and there really was not a need to have this as well. **Mr. Kunze** said, looking back, if Russians were really going to declare war on the United States, that plane flying around up there at a very low speed on nuclear power would be the first thing the Russians would shoot down. So, President Kennedy cancelling the program was obviously the right thing to do.

Chairman Heider thanked Mr. Kunze and said he is a very interesting person with a very interesting background and history. **Chairman Heider** said the committee appreciates Mr. Kunze's willingness to serve on the panel and that the committee would vote on his Gubernatorial Appointment at the following Senate Health and Welfare Committee meeting.

ADJOURNED: There being no further business to come before the committee, **Chairman Heider** adjourned the meeting at 4:50 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary