

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

- DATE:** Monday, March 04, 2013
- TIME:** 3:00 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Heider, Vice Chairman Nuxoll, Senators Guthrie, Martin, Lakey, Bock and Schmidt
- ABSENT/ EXCUSED:** Senators Lodge and Hagedorn were excused
- 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** called the Senate Health and Welfare Committee to order at 3:00 p.m., and a silent roll was taken.
- MINUTES:** **Chairman Heider** asked for the approval of the February 4, 2013 meeting minutes.
- MOTION:** **Senator Bock** moved to approve the February 4, 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 7, 2013 meeting minutes.
- MOTION:** **Vice Chairman Nuxoll** moved to approve the February 7, 2013 meeting minutes. The motion was seconded by **Senator Schmidt**. The motion carried by **voice vote**.
- MINUTES:** **Chairman Heider** asked for the approval of the February 14, 2013 meeting minutes.
- MOTION:** **Senator Martin** moved to approve the February 14, 2013 meeting minutes. The motion was seconded by **Senator Schmidt**. The motion carried by **voice vote**.
- SCR 116** **Relating to Toxic Substances.** **Senator Dan Johnson** informed the committee that this resolution basically deals with toxic substances in the home, and provides awareness. The more consumers are informed, the more choices they have on the products they bring into their home. He informed the committee that there are more than thirty years of health studies that show that toxic substances play a role in the incidence and prevalence of many diseases and disorders, including cancer and birth defects. Society has an interest in reducing the exposure of pregnant women, children, and other vulnerable populations to known toxic substances, and ensuring that consumers have access to the information they need to make informed decisions regarding the health of their families.
- Senator Johnson** cited a "List of Chemicals of High Concern to Children" created by the state of Washington, which is not an exhaustive list, but serves as a resource that will allow companies and consumers to make better choices. This is a bipartisan resolution, sponsored by Senator Johnson and Senator Buckner-Webb, and endorsed by the Conservation Voters for Idaho, Right to Life of Idaho, and Planned Parenthood.
- Senator Johnson** informed the committee that he had spent a part of his life being a licensed sanitarian, or an environmental health inspector, if preferred. One of the things he did in that position was to actually go into homes and look for hazards to a family, which could include anything from unsafe children's products to chemicals, such as formaldehyde.

Senator Guthrie pointed out Line 27 of **SCR 116**, which states that a company has committed to manufacturing their products using naturally safer substances, and he voiced his appreciation of that effort. However, he stated this resolution would make more sense to him if that line were eliminated. He didn't understand why that information was in the resolution.

Senator Johnson replied that it was an easy target, and when he was working with the sponsors on this resolution, they had talked about not mentioning a particular company; he felt they would be open to excluding that information.

Senator Bock indicated that he had the same concern, that he felt it was inappropriate to single out a specific company, and asked that the company be removed from the resolution language.

Chairman Heider stated that in the resolution, he had a concern about the mention of toxic substances and chemicals, but does not actually list any specifically. He asked the purpose of the resolution.

Senator Johnson replied that the purpose was awareness and information to consumers that when they purchase products, there are potentially harmful substances they should be aware of so they may make a better informed choice or use alternatives.

Vice Chairman Nuxoll asked if some of the toxic substances could be listed, and was there something in a household product that is not being listed?

Senator Johnson replied that he was not sure he could answer comprehensively. He stated that he used Washington Code because they created a substantive list that he was comfortable with, and was not different, for example, from Idaho using Washington's standards for the packaging of apples. He stated they were referencing that code, or incorporating it by reference, since Washington has done the work and has identified chemicals of concern. Formaldehyde is found in all types of manufactured products, as in vinyl chlorides and benzenes, for example.

Chairman Heider stated there were several people who wished to testify on the matter, and requested that they be allowed to speak at this time.

TESTIMONY:

John Reuter, Conservation Voters for Idaho, stated that they stand strongly in favor of the concurrent resolution and thank the cosponsors for bringing it forward. He explained that the reason one company was named specifically in the resolution was because they had been a tremendous leader on this issue nationally to ensure that we have safer products from producers in general. They deserve to be commended. He encouraged the passing of this resolution because of the positive impact it will have for all of our families.

Hannah Brass Greer, Legislative Director for Planned Parenthood, stated the goal is for healthy families, and Planned Parenthood supports this resolution.

Jason Herring, President of the Right to Life of Idaho, stated that this resolution is a good start in protecting families and future citizens from potentially harmful substances.

Vice Chairman Nuxoll asked Mr. Herring for an example of something that is toxic to babies in the womb that is contained in household products.

Mr. Herring answered that he could not speak to that directly, since it is a new area. He stated there is substantial research and evidence that there are substances that do affect the unborn child and pregnant mother, but could not offer any further information.

Pam Eaton, President of Idaho Retailers Association, stated that she was uncomfortable being here today speaking on this concurrent resolution because, while she doesn't disagree with anything that Senator Johnson has to say and is not against awareness or distribution of information, but has a concern about this opens the door for problems. She furthered that it has been seen in all states of efforts to stop harmful products that are not backed by proven science. She stated there is often times unintended consequences when a product seen as being harmful is stopped from being manufactured. Manufacturers are pressured into changing the product, just to find out years later that the product doesn't work or that the change was more harmful than the original product. She didn't want to see a lot of legislation get started that bans things down the road, and was testifying in opposition, although applauded the sponsors for the awareness part of the resolution.

Senator Johnson shared that he would be equally concerned as Ms. Eaton if this went the wrong direction, but he believed it was for information and consumer knowledge. He asked to read some material from the Washington State Legislature, RCW 70.240.030, that explained how these chemicals are identified, and that may answer some of the questions that the committee may have.

(1) By January 1, 2009, the department, in consultation with the department of health, shall identify high priority chemicals that are of high concern for children after considering a child's or developing fetus's potential for exposure to each chemical. In identifying the chemicals, the department shall include chemicals that meet one or more of the following criteria:

- (a) The chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids;
- (b) The chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment; or
- (c) The chemical has been added to or is present in a consumer product used or present in the home.

He furthered that to answer Vice Chairman Nuxoll's question, a chemical that comes to mind is mercury or mercury compounds that are absorbed directly through the skin.

DISCUSSION: **Chairman Heider** invited discussion, and commented that he, too, is concerned about endorsing one business over other businesses in Idaho, because it does not seem fair to point out a particular one versus all the other good companies of Idaho.

Senator Guthrie asked Senator Johnson if a jar of Comet, for example, contained ingredients that may, by themselves or in high doses, be dangerous or lethal, but combined with other substances that make up the product Comet, are now not dangerous - how would that be delineated on the label? Are you advocating that Comet voluntarily pull out those dangerous ingredients and list them as lethal, or how is that information conveyed product by product? He furthered that Coca Cola has things in it that by themselves could be harmful, but mixed with other things are not harmful. How is all of that sorted out?

Senator Johnson replied that if there was a chemical, in combination with other chemicals or by itself, that somehow needed a consumer warning, it should probably have a label that indicates this product contains a substance that may be harmful to children or pregnant mothers.

Senator Lakey commented that lines 32 and 36 use a term, "potentially harmful substances," which seems broad. He asked why not just use the term "harmful."

Senator Johnson referenced the comment he had made with the Washington State RCWs; some of these chemicals show up only through biomonitoring, or there may be some other known side effects. One could always study these things until more concerns were found or eliminated with a certain chemical.

Chairman Heider asked that when Senator Johnson refers to the state of Washington having published a list of chemicals of high concern to children, where does the general public find that information? If it is read in our resolution, where does the general public go to find the state of Washington's list of chemicals that are harmful? Without that information, how is that reference helpful?

Senator Johnson replied that it was appropriate to include in the resolution some kind of a citation, which could probably be done, but the list can also be found doing a Google search. There were several standards that were looked at from other states, but this is the one we felt most comfortable with that fit Idaho the best. It was more complete and transparent.

Senator Lodge commented that on the reference to the one company. She felt it was a disservice to other small companies that are also producing products that are chemical-free, and asked that the reference be removed. We know that particular company is important to the economy of Idaho, but it puts the other companies at a disadvantage.

Senator Johnson responded that the point was well-taken.

Senator Guthrie presented a scenario in which there was Company A and Company B: Company A is very forthcoming in disclosing potentially harmful things, so it drives the consumer to Company B for the same product and their product is actually worse. This could have the opposite effect of the intended effect.

Senator Bock stated that he had a couple of comments. Referencing a private company does not seem appropriate. The other is the reference to the state of Washington. That might be something that could give senators pause. He thought it would be better off if we had a list instead of naming the state of Washington as the source. He asked if Senator Johnson would be willing to hold this resolution back until a redrafting could be done?

Senator Johnson commented that he thought that was a good idea, and that he was willing to do so.

Senator Lakey stated that he appreciated that. He would like to see the word "potential" removed.

Senator Johnson replied that there may be some reasons why a company would not disclose the product's chemicals that they are using. One of them could be they are tracing those for proprietary information. There could be a situation where someone may have a chemical of concern used in that process that they would not want to disclose.

MOTION:

Senator Lodge moved to return **SCR 116** to the sponsor for corrections and then bring back a new resolution. **Vice Chairman Nuxoll** seconded the motion. The motion carried by **voice vote**.

Relating to Dentists. **Mike Kane**, Idaho State Board of Dentistry (Board), informed the committee that this bill that deals with the practice of dentistry and a statute in Idaho Code § 54-924 that speaks of disciplinary things that could happen to a dentist that fall outside of the law. The Board is empowered to discipline members of the profession when they find that a violation of the statute has been violated. It has two parts. On page one, the current subsection 2 of the statute, it states that no dentist may practice under any name other his own true name unless the dentist forms a professional service corporation. The obvious reason for that is that dentists should be practicing as dentists and hold themselves out as dentists, but can form a corporate entity if they wish. A professional service corporation is a corporation made up of professionals and these corporations must be owned entirely by dentists. That is the law. The only way a dentist can practice currently is under his own name, or if he wishes to practice under a fictitious name, such as Southwest Dental Associates or Advantage Dental or whatever, a special kind of corporation must be formed, owned only by dentists.

In another section of the law is the Professional Limited Liability Company Act. This act has been on the books for ten or fifteen years, and allows for dentists to form professional limited liability companies, similar to what lawyers and doctors do on a Professional Limited Liability Company (PLLC), for example. We want to make sure that dentists understand that they can form a PLLC or a corporation as long as all members are duly licensed to render the same professional services. The proposed legislation also provides the necessary statutory authority for the Board of Dentistry to take disciplinary action against a licensee who engages in the practice of dentistry, other than in a limited managed care plan, with any business entity in which a person not duly licensed to practice dentistry in this state holds an ownership interest. The second part is probably the more substantive portion of the bill, and this deals with the practice of dentistry.

It has been implied that non-dentists cannot own dental practices. We want to make it absolutely clear that non-dentists should not be running dental practices. First of all, it is a crime in this state for anyone to claim to be a dentist or practicing dentistry unless they are licensed to practice dentistry by the Board. We have had some situations in the last couple of years where we have found out-of-state interests are coming in without knowing what our law is, forming corporations not owned by dentists, calling themselves dental practices and hiring a dentist. Then there is a problem between the dentist and the owners of the corporation, the dentist is fired, and patients were left without a dentist. They don't know where their records are and they don't know how to go about seeing a dentist, sometimes in emergent situations. We thought it was appropriate to make it very clear that if you are a non-dentist, you don't get to run a dental practice. We believe that is appropriate because corporate or business interests should never trump health issues and dental procedures. We believe it is already the law, but we are wanting to be crystal clear that is the law. That is what part two is about.

This bill is supported by Willamette Dental, which is a managed care organization, and it is also supported by State Dental Association. **Mr. Kane** indicated that he just heard some opposition to this bill, but couldn't respond to it at this time because he is unaware of the issue.

Senator Bock stated that he was confused and needed clarification. Are we saying that dentists cannot practice in a C Corporation?

Mr. Kane replied that under the current law, a person must be a professional service corporation, which is set up specifically for professionals to form corporate structures, but it must be dentist-owned.

Senator Bock asked why a dentistry cannot be conducted through a C Corporation. Why are these restrictions in place?

Mr. Kane stated that one could form a professional C Corporation under the terms of a professional service corporation as long as it was dentist-owned.

Senator Bock then referred to the bottom of the second page where the new language is located, and is having trouble understanding it; it may need to be reworded for clarity.

Mr. Kane stated the first clause says you shall not engage in the practice of dentistry other than in a limited care plan. That second clause modifies the first clause. It goes on to say that as a member (which would be a PLLC or LLC), stockholder, employee, director, partner or proprietor of any business entity in which a person is not to be duly licensed to practice in this state holds an ownership interest. He believed that long clause modifies the first clause.

Senator Bock stated that he thinks the language needed clarity.

Senator Guthrie stated that a person cannot run the practice or dental group unless they are a dentist. He offered a comparison that in Pocatello, Portneuf Medical Center is owned by Legacy Health Partners and the Community Benefit Organization. It is a kind of a partnership and they are not doctors or health care providers per se. He confirmed with Mr. Kane that only dentists can own the group, and that business owners cannot own a business and then employ dentists.

Mr. Kane stated that what they are trying to do is prevent a person who is not a dentist from owning a dental practice. There is a code of ethics that dictates a responsibility to do the right thing. The law already exists, but we want to make it very clear.

Senator Guthrie asked how is it different from what he just described, where entities own hospitals and they are not doctors. How is that different?

Mr. Kane replied that he was not overly familiar with the structural entities for hospitals, but he was under the impression that hospitals are places where doctors come to do their work. But medical offices and medical practices are owned by doctors. We have dental offices where people get their teeth worked on, and those must be owned by dentists, which is already the law. We are just making the law clearer.

Senator Guthrie commented that it is very common for physicians to be employed by the hospital.

Mr. Kane stated that he did not disagree, but he was unsure if it had any applications to the practice of dentistry.

Senator Schmidt wished to discuss the final paragraph on page two again. He stated that it looked to him that the language was trying to limit anyone from being an owner or partner, or director who isn't licensed to practice. So would a multi-dental practice of several dentists not be able to hire a clinic director that was not a dentist?

Mr. Kane answered no, because the first clause states the person has to be engaged in dentistry. Certainly, you can hire an employee to come in and help manage the practice in accounting or as a bookkeeper or a director, but if you are going to engage in the practice of dentistry, you cannot set up a corporation if you are not a dentist and then start hiring people as dentists.

Senator Schmidt commented that he was not comfortable with the wording as well, because it seems there is some uncertainty. If there was a group of partners with a dentist and the dentist leaves the group to practice in another state, does that leave the remaining partners subject to discipline?

Mr. Kane replied that could be a violation of the Professional Service Corporation Act. We don't want people who are not dentists to have ownership interests in a dental profession.

Senator Schmidt stated that he understood the language to mean the people who are licensed and practice in Idaho and had a partner who is not licensed are subject to discipline.

Mr. Kane replied that was correct.

Senator Lodge asked Mr. Kane to explain how this would affect Terry Reilly Health Services.

Mr. Kane replied that he was not sure if Terry Reilly Health Services has employees who are dentists. They may have contractors. He was unsure.

Senator Lodge asked if there were someone present who knew more about the Terry Reilly Health Services clinics.

Chairman Heider responded that there are several people who have signed up to speak, and that we would hear from some of the others.

Senator Martin asked if there were other entities, such as doctors, lawyers or plumbers that also must follow this, or are they precluded?

Mr. Kane responded that other professions are precluded from having non-professionals as part of the corporate structure. He gave the example of lawyers. Rule of Professional Responsibility 5.4(4) specifically prevents non-lawyers from owning a legal practice.

Senator Bock stated that he knows it is certainly true of lawyers and what Mr. Kane is saying is correct. But he had a concern that more and more conglomeration of practice and it is happening between accountants and lawyers in various places. The clause seems to be correct, but it seems to be running against the way things are today. As an example, **Senator Bock** asked if that St. Luke's wanted to open up a dental division, would they not be able to do that?

Mr. Kane replied that was incorrect. If they wanted to have dentists come and work at St. Luke's, they could do that.

Senator Bock asked that in all instances in which a physician is practicing, such as within the St. Luke's organization, are those are taken on as contractors and not as employees? Are there any exceptions to that?

Mr. Kane responded that he could not speak to the medical side of that, but dentists now are prevented from practicing any way other than through their true names, a sole proprietorship or partnership, or a professional service corporation.

Vice Chairman Nuxoll inquired why this bill is necessary.

Mr. Kane replied that there are a couple of laws that are currently on the books that are in conflict with our Dental Practice Act. The Dental Practice Act says that a person must practice under their true name or a fictitious name (which is a corporation). There are statutes in the code that allow for dentist-owned professional limited liability companies, which are not the same things as corporations. Those are less structured. Those are allowed now, but are not mentioned in our code, nor is the Managed Care Act mentioned. We want to make sure it was allowed elsewhere in the code, such as in our Dental Practice Act. It is also to prevent non-dentists from running a dental office.

Chairman Heider announced that others in the audience were going to testify at this time.

TESTIMONY:

Dr. John Blaisdell, dentist from Caldwell, Idaho, and also finishing his term as the Chairman of the Board of Dentistry for the state of Idaho. Over the last five years while serving on the Board, he has run into a number of issues while going through the Dental Practice Act, trying to clarify issues and make sure things are in sync with other laws and statutes that are in the code. He ran into a specific situation where they had an outside person in Utah who had an interest with a dentist in an office in Boise. They had a business split and because of the way technology is, the dentist was locked out of the office, had no access to his patients' records or phones, nor were his patients able to contact him. In our view, as the Board of Dentistry, if a dentist did that, he would be abandoning his patients and violating ethical law, and would face sanctions or some review by the Board of Dentistry. In this case, there was nothing that we could do. Patients were left hanging. We were concerned for the protection of the patients' records. This is one of the biggest reasons we are looking to clarify the code.

Elizabeth Criner, was speaking on behalf of the Idaho State Dental Association, which represents more than 800 practicing and licensed dentists in the state of Idaho. We support the changes in **H 142**. In short, this ensures that dentists are able fully utilize the options available in Idaho Code today in how they structure, organize and name their dental practice. We also agree with the Board of Dentistry, that the health interests of patients are best protected when dental care decisions are under the control and professional judgement of licensed dentists. In Idaho Code, or the Professional Service Corporation Act (title 30, chapter 13), and the Idaho Uniform Limited Liability Company Act (title 30, chapter 6) limited the rendering of professional services to the public by licensed professionals. The second change in **H 142** clarifies this point within the Dental Practice Act. By adding subsection 14, the bill further strengthens the authority of the Board of Dentistry to take action against a dentist who engages in the practice of dentistry other than in a limited managed care plan with a business entity in which a person not licensed to practice dentistry in this state holds an ownership interest.

Senator Guthrie asked Ms. Criner if she were saying that a business group could own the building as long as dentists run it, or was that not an option?

Ms. Criner replied that many dental practices do not have to own the building, and you may have a long-term lease with the building. The people who are running the practice business are all dentists.

Senator Guthrie then asked if a dentist running the practice gets together with a quasi-board and hire an office manager, is that legal?

Ms. Criner responded that is was legal. The office management side of things are handled by staff. They could not be an owner of the practice, but rather an employee of the practice.

Vice Chairman Nuxoll asked are all dentists licensed?

Ms. Criner responded that all dentists have to be licensed.

Senator Schmidt inquired if a doctor in a little town sets up his dental office and makes his wife his business manager and partner, is that illegal?

Ms. Criner stated the question is beyond her depth of knowledge.

Mr. Kane answered that it would be illegal.

Roy Eiguren, lawyer and lobbyist, stated that he represents a provides dental service organization that provides services to dentists in various ways. They have questions about how this would apply, and we request that the bill be held for a few days so there is an opportunity to look at the bill and better understand it.

Chairman Heider asked the committee what they wished to do.

Senator Bock stated it would be his preference to send this bill to the Amending Order.

Mr. Kane stated that due to the questions he has heard, he had no objection to the bill being held for a few days.

Senator Lodge asked Mr. Kane to find out how this will affect Terry Reilly Health Services.

Chairman Heider suggested that Mr. Kane speak with Mr. Eiguren and his clients and discuss their issues with the bill.

Mr. Kane responded that was his intent.

Vice Chairman Nuxoll moved that **H 142** be held in committee. **Senator Lodge** seconded the motion. The motion carried by a **voice vote**.

PRESENTATION: Relating to the Community Health Care System in Idaho and Medicaid. **John Watts**, legal advisor for the Idaho Primary Care Association (IPCA), introduced Tom Fronk, the Executive Director of the Idaho Primary Care Association. **Mr. Fronk** informed the committee that he had given each of them a handout (see attachment 1). He indicated that on page 2 of the handout, there was a map of the community health centers (CHC) in Idaho.

Mr. Fronk pointed out the IPCA is made up of thirteen non-profit health centers that provide comprehensive primary care (medical, dental, behavioral, and supportive) and serve high need populations and areas. Charges are based on a family's income and family size.

He informed the committee that in 2011, they provided over a half-million health care visits, with 72 percent being medical visits, eleven percent behavioral visits, fourteen percent dental visits and three percent other.

Senator Bock referred back to the dentists, and asked Mr. Fronk since he probably has dentists on staff, have any of the professional organizations' regulators approached him and informed him that he cannot practice this way?

Mr. Fronk replied no. To his knowledge, virtually all of his physicians, dentists, mental health professionals and so forth are employed.

Returning to his presentation, **Mr. Fronk** informed the committee that approximately 140,000 Idahoans receive care in his health centers across the state in 2011, and he showed the income breakdown in his handout (refer to attachment 1).

He stated that of the 142,000 patients, 48 percent are uninsured. He furthered that less than 20 percent have some form of private coverage, while 24 percent are on Medicaid and nine percent are on Medicare.

He referred to page 8 of the handout, and informed the committee that the cloud of safety net providers listed there, his organization's market is in the charitable cloud. It is their mission to be in that part of the system.

The 2010-2011 studies from the Kaiser Family Foundation show that there are approximately 281,000 uninsured people in Idaho. One out of four of those 281,000 are seen in the Idaho CHC.

He informed the committee that Medicaid expansion would have a material impact on the collective CHC payer mix. It would improve continuity of care for those that are uninsured. He stated that the IPCA is in support of the state efforts to develop an Idaho health plan. He stood for questions.

Vice Chairman Nuxoll asked why there are not more in rural areas.

Mr. Fronk replied that there is a gap. Economics makes it difficult, and federal grants that were scheduled to be dispersed have now diminished.

Senator Schmidt asked if Mr. Fronk would talk about federally qualified health centers (FQHC).

Mr. Fronk stated that there are two terms that are often used interchangeably: CHC and FQHC. Community health centers are one of the small groups of organizations that qualify for federal funding. The black lung clinics in the Appalachians qualify as FQHCs. Renal disease clinics also qualify.

Chairman Heider asked Mr. Fronk to explain the source of all of this funding.

Mr. Fronk replied that he could get back to the committee instead of trying to come up with the answer off the top of his head. Federal grants are a minority payer. Most of the money that comes in to the CHCs are from collections from either insurers or from the patients themselves. There are no free clinics in this group. Medicaid is the biggest payer.

Senator Lodge asked Denise Chuckovich to answer a question.

Denise Chuckovich, Deputy Director, Department of Health and Welfare, introduced herself and stood for questions.

Senator Lodge asked her to explain how dentists are employed with their health clinics.

Ms. Chuckovich replied that the health centers have well over twenty dental clinics and they are mandated by the federal government to operate a dental clinic as a part of their services.

Mr. Fronk concluded his presentation.

Senator Bock asked Mr. Fronk to offer input to the previous speaker. **Mr. Fronk** replied that he would.

ADJOURNED: There being no further business to come before the committee, **Chairman Heider** adjourned the meeting at 4:30 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary