

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Tuesday, March 05, 2013
- TIME:** 1:30 PM or Upon Adjournment
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo
- ABSENT/  
EXCUSED:** Rep. Burgoyne
- GUESTS:** Robert L. Aldridge, TEPI; and Wesley Seideman, Tresco of Idaho  
Chairman Wills called the meeting to order at 2:43 p.m.
- S 1032:** **Robert L. Aldridge**, Trust and Estate Planning Professionals of Idaho (TEPI), presented **S 1032**. He said Medicaid has long had various penalties for certain transfers of property within the "look back" five year time period. He said the Health Insurance Portability and Accountability Act of 1996 included new provisions regarding the transfer of assets in the Medicaid program making such transfers a federal crime, even if the transfer was fully legal under Medicaid law. These provisions became known as the "granny goes to jail" and "granny's attorney goes to jail" provisions, which were later removed. He said Idaho Code Section 56-227 still contains these provisions. He said this legislation would remove that language, while keeping all the language needed to prosecute actual fraud.
- MOTION:** **Rep. Nielsen** made a motion to send **S 1032** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Dayley** will sponsor the bill on the floor.
- S 1033:** **Robert L. Aldridge**, Trust and Estate Planning Professionals of Idaho (TEPI), presented **S 1033**. He said the Uniform Power of Attorney Act provides that the existing powers of attorney would remain in effect upon appointment of a conservator unless otherwise ordered by the Court. He said this is a major problem, especially when a temporary conservator is appointed to preserve the assets of the protected person. He said in many cases the existing power of attorney would make financial decisions in direct opposition to the appointed conservator, and in many cases the conservator did not even know the power of attorney existed until the financial power of attorney had already acted thus creating problems for the conservator and the protected person. He said this bill solves those problems by providing that appointment of a temporary or permanent conservator automatically terminates the existing power of attorney. He said there is no fiscal impact.
- Wesley Seideman**, Tresco of Idaho, testified in support of **S 1033**. He gave an example of a case where an elderly lady assigned her son to look after her and he decided to pay her grandson \$5k a month to care for her, plus other fringe benefits, depleting her assets. He said the judge assigned a temporary appointment of a conservator but that appointment did not automatically terminate the power of attorney so the appointment did nothing to protect the assets of the elderly lady.
- In response to questions, **Mr. Seideman** said after 90 days, the power of attorney would go back into effect. He said typically after 90 days enough information has been gathered by the Guardian ad litem and the Court, etc. to determine an appropriate appointment. He said if the conservatorship is quashed or set aside, the protected person would have the authority to reinstate the power of attorney.

In response to questions, **Mr. Aldridge** said in his cases he has never seen a temporary appointment run out and, when it is granted, it is done on the grounds of threat of immediate damage. He said it is very difficult to get a temporary conservatorship and, in order to obtain one, you would have to prove imminent damage. He said the applicant is liable civilly and criminally for misuse of the power of attorney; however, the estate funds are rarely recoverable. He said Medicaid can try to recover assets but it is rarely successful.

**MOTION:** **Rep. Trujillo** made a motion to send **S 1033** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Reps. Luker and Nielsen** requested to be recorded as voting **NAY**. **Rep. Trujillo** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:21 p.m.

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Representative Wills  
Chair

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Danelle Heath  
Secretary