

MINUTES  
**HOUSE HEALTH & WELFARE COMMITTEE**

**DATE:** Thursday, March 07, 2013

**TIME:** 7:00 A.M.

**PLACE:** Abraham Lincoln Auditorium - Room WW02

**MEMBERS:** Chairman Wood(27), Vice Chairman Perry, Representatives Hancey, Henderson, Hixon, Malek, Morse, Romrell, Vander Woude, Rusche, Chew

**ABSENT/  
EXCUSED:** None.

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Wood(27)** called the meeting to order at 7:03 a.m. He welcomed the audience, gave instructions on meeting decorum, and acknowledged the newly named Abraham Lincoln Auditorium, requesting the audience respect the beliefs and viewpoints of its namesake.

**H 248:** **David Hensley**, Chief of Staff, Governor Butch Otter's Office, presented **H 248**, legislation to establish an Idaho Health Insurance Exchange (HIX). This will be an independent body corporate and politic, not a state-run Exchange. The HIX Board will be created and empowered to adopt bylaws that must be approved and reviewed by the Director of the Department of Insurance (DOI). The Board will also appoint advisory committees, assess fees, and collect fees.

The Exchange cannot change its legal structure. It has to be financially self sufficient, cannot ask for state funds, and cannot encumber state assets. Participation in the Exchange has to be voluntary, with no insurance purchase requirement, and no prohibition of any qualified provider. The Board must hold public meetings. A procurement process has to exist. The HIX cannot inquire about firearm use or storage. It must also provide security for the information acquired from participants, maintaining confidentiality.

The fourteen Governor-appointed voting Board members are subject to Senate confirmation. The Board will also have three Legislative voting members and two nonvoting members from the DOI and the Department of Health and Welfare (DHW). The Board will submit annual written activity reports and present any changes in bylaws, fees, and regulations to the germane legislative committees, during the session.

There are two types of costs: startup, or implementation, and ongoing. Twenty million dollars in federal funds are available to build the Exchange, with additional grants possible to cover costs beyond that amount. Other states are willing to share major components they have developed, and private companies selling Exchange systems are already in the marketplace. Ongoing costs require a self-sufficient operation. Annual costs are estimated at ten million dollars. Health and Human Services (HHS) estimates a 3.5% premium on federal Exchange plans, with ongoing annual federal costs estimated at twenty-eight million dollars.

Responding to questions, **Mr. Hensley** explained that the initial four-year term allows the Governor to reappoint individuals or the entire group. The three key areas are state control and discretion with respect to governance, finance, and oversight. The Governor will select local citizens to conduct the Board's business in an open and transparent process in Idaho, instead of Washington D.C. or Maryland. The state controls the ongoing operations, with an eye to cost-effectiveness. The Board and state determine and approve the Exchange's terms, criteria, rates, actuarial plan values, and navigators, impacting transparency and accountability through the process. Local decisions are better than decisions made in Washington D.C.

The Exchange could not prohibit producers or providers, as long as they meet the applicable laws. There will be a marketplace outside of the Exchange where agents can still sell plans to individuals not participating in the Exchange.

The Exchange Board would apply for additional federal grants for set up costs beyond the twenty million dollars funded. There is no set up funding liability should we decide, after establishing a state-based Exchange, that we would rather have a federal Exchange. **Mr. Hensley** shared the Attorney General's opinion that there is no Health Freedom Act violation. Implementation funds will carry the HIX through 2015, with non-state funds available to cover additional start up and ongoing costs.

**Mr. Hensley** said the state has a great understanding of what is required for a state-based HIX under federal regulations and law. Questions exist about the appearance of a federal Exchange, and information is still forthcoming about HHS provisions. Under **H 248**, Idaho is not liable for any acts, funds, or anything else that this Exchange might do or be liable for by not doing. Before the Exchange can accept any application and conduct its operations, it has to certify to the Governor, DOI Director, and DHW Director that information obtained is secure and privacy is protected.

There are some federal reporting requirements, which must be conveyed to the federal government, but all other information is protected. The Patient Protection and Affordable Care Act (PPACA) does not mandate use of an HIX, and provisions in **H 248** make sure it is completely voluntary. The state retains the authority to terminate the entire state-based Exchange. **Mr. Hensley** said requirements for outside sales are unknown; however, the Exchange would not be able to acquire any personal information from outside providers or carriers. On the Exchange website individuals will provide only preliminary eligibility information, and be able to select a policy to purchase. Additional information of a more personal nature will be only between the provider and the individual.

**Wayne Hoffman**, Executive Director, Idaho Freedom Foundation, shared the foundation's history and their legislative input. He stated that they are opposed to a state insurance Exchange, expressing concern that Idaho will have to conform to specific federal government regulations, with no input ability, as evidenced when the PPACA was developed. He said there has only been one example of an established government program being eliminated, and it was moved into another program. Despite changes made from the original Senate bill, they remain concerned with the creation of a new government agency. The language to support Idaho business is in opposition to a free market. The Exchange will be stewards of government-administered fees, so they have the obligation to find the right contract, no matter if it exists outside of Idaho. The PPACA invalidation statement does not stipulate what the ruling could be. The Foundation finds little legislative oversight and few provisions that restrain the operation of the Exchange. The Affordable Care Act (ACA) is a form of socialism. Accepting portions of the ACA clears paths for the entire Act. He asked for a stand against the overreach and imposition of the federal government.

Those speaking **in support** of **H 248** were **Woody Richards**, American Health Insurance Plans; **Peggy Munson**, AARP; **Christine Tiddens**, Catholic Charities of Idaho; **Scott Leavitt**, Idaho Association of Health Underwriters; **Margaret Henbest**, Nurse Leaders of Idaho; **Stacey Satterlee**, American Cancer Society, Cancer Action Network; **Steve Thomas**, Idaho Association of Health Plans; **Ray Stark**, Boise Metro Chamber of Commerce; **Elizabeth Criner**, Idaho State Dental Association; **Toni Lawson**, Idaho Hospital Association; **Jeremy Pisca**, St. Alphonsus Health Systems; **Brent Olmstead**, Milk Producers of Idaho;

They said an Idaho HIX will be able to negotiate for the best health insurance for Idahoans, agreeing that the HIX would provide more affordable options. It was clarified that the previous medical underwriting is longer done, reducing personal health information gathered. They expressed concern that a federal Exchange would cost more than a state-based HIX. The loss of industry-related jobs and state tax revenue with a federal Exchange, was of concern. They were of the opinion that a state-based HIX promotes affordable high quality coverage for all Idahoans, especially low and middle income families, allowing personal health and health care decision responsibility. They were pleased with the proposed Exchange transparency. An online market place will offer clear options, with better competitive comparison opportunities. It was their view that **H 248** is not an endorsement of any federal act or ObamaCare. Idahoans developing an Idaho-based Exchange will help take care of Idaho's insurance needs. Experience working with federal entities was shared, along with the preference for Idahoans designing, working, and in charge of an Idaho Exchange. Concern was expressed that call centers would be located in Washington D.C. or other parts of the nation. They expressed the opinion that timely access promotes wellness and decreases higher downstream health care costs.

Those speaking **in opposition** to **H 248** were **Kerry Uhlenkott**, Right to Life of Idaho; **Karen Calisterio**, Republic Liberty Caucus of Idaho; **David Ripley**, Executive Director, Idaho Chooses Life; **Dr. Loel Fenwick**, Physician; **Dan Roberts**, SOS Foundation of Eastern Idaho; **Milt Espuibel**, Tea Party of Idaho; **Daryl Ford**, **Joe Egusquiza**, **Mary Adler**, **Viki Purdy**, **Mark Druid**, **Sheila Ford**, **Daniel Freedman**, **Steve Ackerman**, **Bob Van Arden**, **Greg Ferch**, **Jim Camelik**, **Danielle Ahrens**, **John Colson**, **Chad Inman**, **Joe Rommer**, **Steve Pugmire**, **Dale Pearce**, **Craig Campbell**, **Ronalee Linsenmann**, and **Duncan Ferris**, citizens.

They were concerned about personal record protection, religious freedom, unborn life protection, cost estimates that continue to rise, and federal oversight of every aspect of an HIX. They were of the opinion that the ACA could only impose a tax penalty if a state-based Exchange exists. Strong objection to the existence of ObamaCare was expressed. They asked which law enforcement agency would enforce the tax without a purchase, how Board members would be paid, how state liability would be avoided with three legislative Board members. Fiscal concern was expressed about the impact on future generations when federal money is borrowed from other countries. Concern was expressed that our citizens will become government dependents. It was requested that additional time be taken before passing any legislation, so all the HIX facts are known. This is an issue of who will bear the burden of implementation when families are already experiencing financial strain.

For the record, no one else indicated their desire to testify.

**Rep. Vander Woude** said he is **opposed** to **H 248**, which is really a private Exchange with the state having no supervision beyond annual reports. He expressed concern that monitoring would be by a state agency.

**Rep. Rusche** stated that the costs are just estimates. Until the Board and the bylaws exist to determine truer costs, a state-based Exchange will be less of an operational expense. He noted that most discussion has related to government oppression and nullifying ObamaCare. The real question is will a state or federally managed tool best provide private insurance products to the population. Because Idaho can do this less expensively than a Maryland or Washington D.C. central operation, it is important to move forward with this legislation.

**MOTION:** **Rep. Rusche** made a motion to send **H 248** to the floor with a **DO PASS** recommendation.

**Rep. Malek** commented that ObamaCare is not the answer. We're not going to take control of our state sovereignty. We must take advantage of the next fifteen years to make sure Idaho is a leader with the best healthcare and opportunities for families, which will not happen with a federally run government program. This HIX is the perfect answer for Idaho, given the current situation, and he will be voting **in support** of the motion.

**Rep. Morse** said the variety of testimony represents the opposition and anxiety about ObamaCare. However, this is an issue about the HIX, not ObamaCare. The choice is between a federal Exchange, with less control and input, versus a state-based Exchange. The changes made to previous bills that created **H 248** strengthen the legislation. There will be continued ObamaCare challenges and litigation. If any part of ObamaCare is ruled invalid and unconstitutional, this legislation gives Idaho the flexibility and legal control to collapse and eliminate those affected portions. A State-based HIX provides a superior choice to one run by the federal government. For these reasons he will be voting **in favor** of **H 248**.

**Rep. Henderson** emphasized that the private sector could do a better job running the Exchange than the government. **H 248** is an identity of a state government, but comes as close to his ambition of a private sector administered and funded Exchange as is possible. Reading from sections of the legislation, he said Idaho is making a bold and assertive statement of our state's rights. He encouraged everyone to read the bill and will be voting **in support** of the motion.

**Rep. Hixon** stated that he has had many discussions with constituents and the business community. Although not an easy decision, and independent of other influence, he's taken his stand. As a member of the Idaho House of Representatives, he cannot subject any citizen to an insult of the federal government that does not reflect the best interests of Idaho citizens. Previously opposing any state-based Exchange, he has read through the law, sat through meetings, and absorbed the endeavor. After all that, he is not ready to give authority to the federal government. There is enough protection in **H 248** to keep costs low for those who choose to use the HIX. The liability obligation section is important, which is why it is an independent body corporate and politic. The previous legislative oversight concern has been addressed and strengthened in this bill. A state-based Exchange will save Idaho citizens money. Given all facts, and the necessity for a decision, he will approve and closely monitor the state-based Exchange.

**Vice Chairman Perry** commented that Idaho's open government is a privilege that she appreciates. Testimony about ObamaCare concerns are understandable; however, we are already operating out of PPACA. She stressed the need to understand that a state-operated Exchange is a separate issue from ObamaCare policies. Rep. Perry shared her pleasure that this Exchange is voluntary, allowing choice. Any future changes to ObamaCare and PPACA policy will be done at the federal level. The state has implementation flexibility, which is a two-year culmination of input, discussion, and research. Idaho needs to lead by avoiding ideology, taking time to listen to both objective research and stakeholder input, taking a stand to protect its citizens. Every state will have an Exchange and the question is who will operate it.

**Rep. Romrell** expressed the difficulty of this decision, although this is an improved bill. As a proud Idahoan, he is not interested in letting the federal government handle an Exchange. We have more correction and change opportunities with a state-run program. He will vote **in favor** of the motion.

**Rep. Hancey** wished the debate was about nullification of ObamaCare. Instead, the debate is about a state or federal Exchange. The state-based Exchange is the best program for Idaho. It is unfortunate that we have the health care problem and a fumbled resolution attempt by the federal government. The state-based Exchange seems to be the best way to work together to resolve health care industry problems. He will support the motion.

**Rep. Vander Woude** expressed concern that having a state-based Exchange adopts, by federal standards, a section of code. Adopting any new and existing federal regulations without any review is a dangerous precedent. He was concerned with the stipulation that the Board writes its own bylaws without any outside approval, and any changes are reviewed by the DOI Director. He would prefer a ten dollar fee cap, especially in light of the continually increasing cost estimates. He was told that a cap was not possible because it would be a non-state agency that must be self sufficient. Rep. Vander Woude expressed his concern that there was no religious conscience protection in **H 248**, wondering, why if such protection can be granted to religious agencies, individuals are excluded. He stated his intent to stand against the motion.

**Rep. Hixon** said defaulting to a federal Exchange gives up all negotiation authority. Once that occurs, religious freedom and any other freedom will be lost. The decisions about navigators and who can purchase policies will be made by someone at the federal level. The Legislature can repeal this act, including fees that are out of balance.

**Chairman Wood(27)** declared Rule 38, stating a possible conflict since his employer and it's subsidiaries may or may not be affected by this legislation.

**Chairman Wood(27)** reminded the committee of circumstances and consequences to the introduction of wolves. He expressed his displeasure that a choice has to be made. He shared a recent conversation he had with **Paul Dioguardi**, Director of Intergovernmental Affairs, HHS, about the state-based Exchange government structure. Mr. Dioguardi explained that the structure has not been decided. It may have a portion run out of Region 10 in Seattle, which reports to HHS in Washington D.C. Chairman Wood(27) stated his refusal to acquiesce by default to the federal government managing a sector of our economy. He stated his respect for all testimony presented. Idaho and our country are great because individuals participate in their state government.

**Rep. Malek** declared Rule 38, stating a possible conflict of interest because his company has clients who may or may not be affected by this legislation.

**VOTE ON MOTION:**

**Chairman Wood(27)** called for a vote on the motion to send **H 248** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Vander Woude** requested he be recorded as voting **NAY.** **Chairman Wood(27)** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 10:32 a.m.

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Representative Wood(27)  
Chair

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Irene Moore  
Secretary