

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, March 07, 2013

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt

**ABSENT/
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** convened the meeting at 3:02 p.m. He asked the secretary to take a silent roll.

H 142 **Chairman Heider** welcomed everyone in the audience for coming and announced that the first item on the agenda is **H 142**, presented by Michael Kane, Idaho Board of Dentistry Counsel. **Mr. Kane** informed the committee that there was an amendment to **H 142**. He reminded the committee that when **H 142** was presented last Monday, Mr. Eiguren had some concerns and asked to have the bill held for a few days. He stated that those concerns have now dissipated. He also reminded the committee about questions from Senator Lodge about the Terry Reilly Clinic, and it turns out that there is a group of dentists that work for primary care 501(c)(3) nonprofit all over the state that we did not know about. In order to fix that, we are proposing an amendment. Where it previously was written in three places that: "...or professional limited liability managed care plan pursuant to chapter 39, title 41, Idaho Code," it is proposed to be changed in all three places to read: "...,except for a dentist practicing dentistry as an employee or contracting dentist providing dentistry services to any health center as defined and authorized in section 330 of the public health service act as amended codified at 42 U.S.C. 254b."

We ask that you sent this to the amending order and we will get a better engrossed bill and a better amendment. That will take care of the 501(c)(3) nonprofit federally funded care clinics. There was another question about doctors and hospitals. We checked with the Idaho Medical Association and they approve the bill. **Mr. Kane** stood for questions.

TESTIMONY: **Elizabeth Criner**, Idaho State Dental Association (ISDA), stated that the ISDA agreed with the state board, and support the changes.

Roy Eiguren, President of Eiguren Public Policy Firm, thanked the committee for the indulgence provided to have his client, Pacific Dental Services, take another look at the legislation. He supported the change. He introduced Dr. Thompson from Eagle and Dr. Howard from Meridian, who were here to observe the process.

MOTION: **Senator Lodge** moved that **H 142** be referred to the 14th Order for amendment. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Lodge will carry **H 142**.

H 188

Toni Lawson, Vice President of the Idaho Hospital Association, presented **H 188**. She indicated that in July 1012, some changes were made to regulations from the Center for Medicaid and Medicare Services that streamlined regulations. New rules have created an inconsistency with the existing Idaho Code and federal regulations, and has caused problems for hospitals trying to meet requirements of the Joint Commission certification process. Simple language is being added to Idaho Code § 39-1394, that currently states that orders for treatment for a patient must be authenticated by the author of the order. This bill would add language that would extend that to another practitioner who is responsible for the care of the patient and who is authorized to write orders by hospital policy in accordance with state law to authenticate the order.

She furthered that an example of how this may play out in hospitals is there are physicians who often work seven days on and have seven days off or cover services in a hospital as part of a group practice. If a physician gives a verbal order, transitions someone in their practice to care for that patient and then leaves, that person taking over the care of the patient cannot authenticate that order. We would have to track down the physician who gave the verbal order or wait until the physician returns before we can authenticate that order. This new bill is an improvement, allowing for better quality and quicker authentication of this order. **Ms. Lawson** then stood for questions.

Vice Chairman Nuxoll inquired what was happening before now. **Ms. Lawson** replied that orders have always been authenticated, but previously, only the physician who gave the verbal order could later authenticate that that was the correct order in the patient record. Now, the physician that gave the order or the physician that was currently responsible for the care and treatment of that patient can look at the order and authenticate that that is the correct order for that patient.

MOTION:

Senator Bock moved that **H 188** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry **H 188**.

H 211

Susie Pouliot, CEO, Idaho Medical Association (IMA), presented **H 211**. This legislation authorizes the Idaho Board of Medicine (BOM) to share information about physicians and surgeons with the Department of Labor (DOL), to facilitate the development of a health care workforce database, which will assist in analysis, planning, determining educational programming for the future, and recruitment and retention of health care providers. **Ms. Pouliot** furthered that this type of information will be especially helpful to ensure that there is an adequate health care workforce in the future, especially in the rural areas. The BOM has information about physicians it licenses, but it is not necessarily an indicator of where and if those physicians are practicing in the state of Idaho. Because it is difficult to obtain a medical license, it is common that when a physician gets a license in a particular state, they hold onto that license, even if the physician is no longer practicing in that state or no longer actively practicing in the state in which they reside. While there may be a large number of physician licenses, it does not mean that they are providing care. The DOL has information about people who are working in Idaho and drawing a paycheck for doing so. This will allow the BOM to share information and cross-reference with the DOL, to accurately identify which physicians are practicing and where.

Ms. Pouliot informed the committee that the governor has an Idaho Health Profession Education Counsel that has been working in partnership with DOL to develop this database. They have achieved the transfer of information between other licensure boards and the DOL. This legislation would specifically authorize the BOM to share information DOL, because there was some question as to whether they had that authority or not. Moving to the language of the bill itself, the legislation amends the powers and duties of the BOM, found in section 54-1806, Idaho Code. On page 2 of the bill, there is a new subsection 13 added, that specifically allows the BOM to share with DOL personal identifying information. This information shall remain confidential and is not subject to public disclosure, as required in section 9-340C, Idaho Code. Section 9-340-C of Idaho Code pertains to records that are exempt from public disclosure and both the BOM and DOL are subject to the provisions of that statute.

Ms. Pouliot stood for questions.

Vice Chairman Nuxoll stated that she was assuming the information being shared was about the doctors in the area. **Ms. Pouliot** confirmed that was correct; the information that is being shared is personal identifiable information about physicians, including social security numbers, which the Idaho BOM and the Idaho DOL already have. In that sense, there is no exchange of new information, but rather a cross-reference of information that both agencies already have. **Ms. Pouliot** stated that the IMA represent physicians from across the state of Idaho whose information is going to be shared and they are very supportive of this process because the development of this database is so critically important.

Vice Chairman Nuxoll then asked if the doctors are asked if that information can be shared at the time. **Ms. Pouliot** answered that each of the agencies already had the information. **Vice Chairman Nuxoll** asked for confirmation that doctors are not being asked at the time if they want to share information, and also if the information of each department was confidential. **Ms. Pouliot** stated that she would answer the second question first. There are already provisions in state statute that require both of those agencies to keep that information confidential. This issue was brought before the IMA House of Delegates, which is our large statewide meeting that we have annually. Our physicians asked us to move forward with this legislation that would proactively speak for the BOM to share information with the DOL.

Senator Hagedorn asked for confirmation that the IMA is in support of this as well. **Ms. Pouliot** replied that the IMA is, and is the one sponsoring the legislation.

Senator Lakey commented on the lack of consent from the doctor involved. He pointed out that there is a limited population as far as licensed doctors go, and that they understand the importance of this program. How difficult would it be to get some type of consent form to authorize the sharing of information? **Ms. Pouliot** replied that she could not speak to the undertaking, but we feel we are a very member-driven organization and we proceed with our agenda based on what our physician members ask us to do. She could not speak to how the physicians could consent to each of these entities having their information in the first place, but wanted to stress that this was not a disclosure of new information. This information is already in place with the BOM and within the DOL. It is simply a cross-reference of existing information to be able to accurately identify those people. Our own members whose information is being shared have been very supportive of this process.

Senator Guthrie pointed out that on the thirteenth paragraph, it states: "Share with the department of labor personal identifying information..." He asked what identifying information meant. Is the goal to establish how many doctors there are in the state to identify shortages, as well as specialties in which there are shortages? **Ms. Pouliot** replied that the type of information that is being shared is the social security numbers, which both entities already have. With respect to the database, if we can track where physicians are practicing and how much, that will allow us an accurate picture that we don't have now. We need to know where the shortage areas are in order to make educational programs more regularly available and explain other opportunities for recruitment and retention so we can get physicians to those areas. The database would include information about those physicians, specialties, where they practice, how often they practice and in what geographical area they practice.

Senator Guthrie inquired to what extent are their earnings shared. **Ms. Pouliot** responded that the DOL already has that information and it would not be shared back with the BOM. This proactively allows the BOM to give the physician's identifying information to the DOL. The DOL already knows who is making what.

Senator Hagedorn asked Chairman Heider if there were further testimony from the BOM on the sign-in sheet. **Chairman Heider** stated there was no one else. **Senator Hagedorn** asked how the DOL would know how much a doctor makes. He indicated that he is hesitant to go forward with this bill without someone from the BOM who is not a state agency, but a pseudo-managed state organization to collaborate with the DOL, who is a state agency. He needed more information.

Ms. Pouliot apologized if she created confusion. She indicated that the BOM will not be receiving any information regarding physician income. She could not speak to the level of information that the DOL has, but knows they have collaborated with several other licensure boards, such as the Board of Nursing and other professionals, to create this database. The BOM had hesitation that they were allowed to share identifying information with the DOL, and the IMA, by our membership, was asked to intervene and bring legislation to clarify that the BOM does have authority to share this information with the DOL for the purposes of creating this database.

Senator Hagedorn stated that hearing that the Board of Nursing currently does this made him feel better, and he wondered if that were in statute. **Ms. Pouliot** said she knows other licensure boards have participated in this process and have shared information; she did not have an exhaustive list of the boards that were participating, but knows the Board of Nursing was one of the boards. Their legal counsel with their board felt that they did have the existing authority to share that information. The legal counsel of the BOM did not feel they had that their board had the authority to share that information, and that is why she was before the committee today.

Senator Hagedorn asked if there was someone at the meeting from the DOL that could testify in this matter. **Chairman Heider** then asked the audience if there was anyone from the DOL. **Senator Bock** stated that he thought he had a response for Senator Hagedorn. He pointed out to the committee that we all filed forms with the DOL for unemployment insurance. As a result, the DOL knows how much all of us make in one way or another. If you have employees, you have to provide social security numbers. On the basis of how much they made, the employment tax is paid. Nothing new is going to be created with the DOL as a result of this.

Senator Lakey asked Ms. Pouliot for confirmation that there is no new information that is being shared. Are they just cross-referencing the same information, or is there different information from each of them that is being shared? **Ms. Pouliot** replied that that was precisely the process. The BOM has a list, say, of 4,000 physicians who have licenses to practice within the state of Idaho. The DOL has a list, say, of 3,000 physicians who are working in the state of Idaho. They have social security numbers of these people, as does the BOM. They cross-reference to see that of the 4,000, there are 3,000 that are actually working in the state.

Senator Lakey stated that if they are cross-referencing the same information, and that both the BOM and DOL have the same information. There is no exchange of new information, was that correct. **Ms. Pouliot** replied that was correct, but she wanted to clarify the term cross-reference. She did not necessarily mean that the DOL is giving information to the BOM, but rather that the BOM provides information to the DOL, and that is where the cross-referencing takes place. This is information that the DOL already has; the BOM is not receiving any information.

Senator Lakey asked that the information coming from the BOM that is going to the DOL is information that the DOL already has and already has permission to have, and just cross-referencing that. **Ms. Pouliot** stated that was correct.

Ken McClure, attorney for the Idaho Medical Association, offered to answer any questions the committee may have. **Senator Guthrie** asked if the information is a one-way exchange, how does that help the BOM, hospitals, and the health care providers fill different specialty groups? **Mr. McClure** responded that the DOL is putting the database together for a number of different allied health professions. The purpose for doing so is to establish a government database of where there are shortages of those practitioners. Once a person has a professional license, it is precious, so there are professional licenses held by people who don't live in Idaho, but yet they have an Idaho medical license. There will be those who are mostly retired, but not completely, and they won't want to give their license up. The BOM has all of the information on who is licensed to be a doctor in Idaho. The DOL has a multitude of identifying numbers in their database, but they don't know which ones of those are doctors. This will show where there are doctors, and more importantly, where there are not doctors, so we can qualify for grants and funds that are available to address those shortages. That is the purpose of this legislation. This will allow them to come up with a database, as they have for all the other allied professions, so we can then qualify for funds that are available for improvement and retention, etc., so we can get physicians into those shortage areas.

He furthered that the DOL creates the database. The attorneys on the BOM indicated that they cannot assist in that process because their statute does not allow us to do that. They are coming forward to ask the legislature for permission. The database is created out of information the DOL has, and they simply don't know where the doctors are.

Senator Hagedorn stated that he is passionate about getting more doctors into the state of Idaho. He is concerned that not all of these doctors know that their individual information that they registered with the BOM is now being shared. Are they aware of that when they register? **Mr. McClure** replied that the doctors are aware when they file their income tax return that the Tax Commission has that social security number. They are aware when they file with the DOL for unemployment insurance that the DOL has that number. They are aware that the BOM has that information. But as to whether they are aware that the BOM is going to talk to the DOL and create a database, **Mr. McClure** stated that he did not know. But he indicated that the DOL already has each bit of information that the BOM has. He could not answer with certainty that the doctors are asked specifically about awareness of the database.

Senator Hagedorn asked how burdensome it would be to send an email or a message to the doctors who are registered, to get their authorization. **Mr. McClure** stated that he understood the concern, but the information is already there. As to how hard it would be, assuming a person could send out 4,000 communications, a database would have to be created within the BOM to reflect those who have responded and those who have not. It is possible to do this, but our view of this is since both the BOM and DOL have this information - there is no additional extension of information - and that the statute is very explicit that each of them who already possesses that information, must treat it as confidential and with nondisclosure, and frankly, we felt that it was an unnecessary step.

Senator Hagedorn stated that when he does business with the Tax Commission, he trusts that Tax Commission will not share his business with the Governor's Office or any other entities. He has that same assumption when he does business with the DOL, unless he is told otherwise. If he were a doctor and did business with the medical board, he would assume that trust exists, unless he is told otherwise, and that is where he has concern. The trust and credibility of the BOM will be compromised if doctors are not told that their information could be shared with the DOL or another department.

Mr. McClure stated that he understood that, and he wished he could give a better level of comfort. However, he furthered that there is a balance between the privacy of the individual and the efficiency of government. He stated that what Senator Hagedorn is suggesting is that the balance should be struck in favor of the privacy of the individual. If the sharing of information was with someone who did not already have it, then **Mr. McClure** stated he would be sharing the same concern. But in the case where that information already exists, he is disagreed with Senator Hagedorn, because in order to allow this to occur, a significantly burdensome effort is created and he has not heard a physician say that he wants to be asked first.

Senator Schmidt stated that if a person were to go to the Idaho BOM web site, there is a link to IDACARE, which lists the statute the says physicians will share information about their practice, and the physician is required each time they renew their license to update information on this public web site. It is public information. He commented that this discussion reflected the discussion that was at the Idaho Medical Association House of Delegates in terms of physicians being asked to share information. It made more sense the more the group talked about it. As far as permission goes, it may be difficult to get permission from people who are not actively practicing, and those are the ones that need to be counted. That is part of why getting permission would be quite difficult.

Senator Bock informed the committee that he successfully passed the California bar exam in 1979 and the Idaho exam in 1982, and hung onto his California license. He expressed his thought that there are lawyers who are licensed in Idaho but are living elsewhere, and it is a similar scenario with doctors.

Vice Chairman Nuxoll commented that she would like to doctors giving their permission for such a sharing of information. While there may be information on each side, the purpose is different for what we are doing here. She stated that if she were a doctor, she would want to be asked her permission because she may not agree with what her information is being used for.

MOTION: **Senator Bock** moved that **H 211** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded. **Vice Chairman Nuxoll** stated she would like to propose a substitute motion, that **H 211** to the amending order. It was not seconded, and the substitute motion died for lack of a second. There was a return to the initial motion that **H 211** be sent to the floor with a **do pass** recommendation. **Chairman Heider** asked for a roll call vote. **Chairman Heider and Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt** voted aye. **Vice Chairman Nuxoll** voted nay. The motion carried. **Senator Bock** will carry **H 211**.

ADJOURNED: There being no further business to come before the committee, **Chairman Heider** adjourned the meeting at 3:48 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary