

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, March 18, 2013

TIME: 3:00 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senators Lodge and Schmidt

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 meeting to order at 3:03 p.m. and welcomed the audience. He asked the secretary to call silent roll. He announced a Joint Senate and House Health and Welfare meeting on Friday, March 22, to discuss Medicaid expansion and the elimination of the Catastrophic Fund. This meeting is to be an informational meeting only and no public testimony will be taken. He stated that first on the agenda was **HCR 17**; however, Representative Wood, who was supposed to present the resolution, was absent. He moved to **HCR 19** and welcomed Representative Romrell to the podium.

HCR 19 **Representative Romell** presented **HRC 19** relating to the Findings of the Legislature and Encouraging the Inclusion of Nutrition Services as an Integral Component in the Prevention and Treatment of Chronic Disease. **Representative Romrell** stated that he was honored to represent dieticians; he worked with them in the past when he was a hospital administrator. The talking points he presented were provided to him by the dieticians. This is a concurrent resolution and its sponsors are himself (Representative Romrell), Representative Wood, Representative Perry, Senator Heider, and Senator Lodge.

There is no fiscal impact. **Representative Romrell** stated they believe they can save health care costs while helping Idahoans achieve better health. Registered dieticians in Idaho are trained medical professionals who are licensed through the Idaho State Board of Medicine. The Idaho Academy of Nutrition and Dieticians is ready to be a team player in working with other health care professionals such as physicians, physician assistants and nurse practitioners to incorporate nutrition and nutrition services into the treatment of chronic diseases. He stated their goal is to have a seat at the table because they are passionate about their belief that healthy eating habits last a lifetime. The main purpose of this resolution is to showcase that people have a problem with physical inactivity and core eating habits in Idaho. One of their goals with this resolution is to increase awareness of the role that nutrition and physical activity can play as part of a healthful lifestyle. This concurrent resolution will also aid in writing and securing grants and foundation dollars for needed projects, interventions and research.

Representative Romrell stated he hopes to prevent obesity related diseases and dramatically reduce health care costs if they reduce the average Body Mass Index of participants by just five percent. By 2030, this would lead to a reduction of health care costs of 30 million dollars. Nutrition is a factor in preventing most chronic diseases such as diabetes, heart disease and cancer. According to a published survey, ninety-four percent of primary care physicians believe that nutrition is a significant factor in the prevention, treatment and management of chronic diseases.

Medical nutrition therapy produces improved clinical outcomes and reduces health care costs for individuals with obesity and diabetes. There is a documented reduction in hospital utilization when medical nutrition therapy is provided to patients with diabetes and cardiovascular disease. Registered dietitians work in a variety of professions throughout Idaho in the private and public sector including health and wellness, hospitals, clinics, schools, skilled nursing and assisted living facilities, food companies, pharmaceutical companies, clinical research, public health, diabetes and cancer care, prevention, universities and colleges, and sports medicine.

MOTION: **Senator Martin** moved to send **HCR 19** to the floor with a **do pass** recommendation. **Senator Bock** seconded the motion. The motion carried by **voice vote**. Senator Lodge will carry **HCR 19** on the floor.

H 98 **Anthony Poinelli**, Deputy Director, Idaho Association of Counties, presented **H 98** relating to Medical Indigency. **Mr. Poinelli** stated **H 98** is coming forth from the Catastrophic (CAT) Health Care Cost Board (Board). As they looked at statute and various issues that have come before them, they felt some clarity was needed in the statute. Most of **H 98** contains clarifications. In section 1, dealing with the declaration of policy, he stated they are clarifying that dependents are included as part of individual responsibility. The reason for this stems from a couple cases that came before the Board this past year, involving individuals who were over 18, but still in school. There were serious questions about whether those individuals, as adults, were on their own. After they received various opinions from legal counsel around the state, the CAT Board felt that if the parents were claiming these individuals for income tax purposes, then the state or the counties shouldn't bear any responsibility for medical claims.

He stated that in section 2, there have been some changes to some of the definitions. Under completed applications, there have been some modifications to clarify what an obligated person is for the reason just mentioned. On page 4, section 23, involving reimbursement rate, they have extended the time line from July 1, 2013 to July 1, 2014 for the unadjusted Medicaid rate. Two years ago, the legislature put in 95 percent of the unadjusted Medicaid rate, which provided a 1.8 million dollar savings. Hospitals have agreed to extend this, and this provides about a 1.8 million dollar savings. The reason for this is because there is uncertainty about what changes may be coming in Medicaid. Under the definition of resources, there have been some clarifications because there have been questions raised over the past year by various organizations about when resources actually start. Since 1985, counties have been conducting investigations when they receive an application to consider indigency. During this investigation, they look at resources and when the application has been submitted. Everything is based around when the necessary medical services were received. In order to clarify this, we have stated here that the time frame starts when the necessary medical services are received. No matter the outcome of the investigation, everything is based around the time the necessary medical services were provided under resources for indigency determination.

Section 3 deals with medical records. There is a requirement in the statute currently that states that when a county submits a request to a provider for medical records, that provider must provide the documents to the county within ten days. The providers are having difficulties meeting the ten day deadline, so this bill allows for a thirty day extension. With this, if a provider cannot meet the ten day deadline, they then can notify the county and the county must grant them a thirty day extension. In section 4, there is a number of technical clean-ups. The very last section deals with billings. The intent of this language is to try to reduce some of the duplication that occurs as individuals send in medical bills. This is meant to benefit the providers as well as the counties regarding their paper work load.

Senator Bock noted that there is a lot going on in this field with regards to the Patient Protection and Affordable Care Act (PPACA) and the CAT Fund. He stated that when an individual turns 18, they are an adult, and their parents are no longer responsible for providing medical care for them unless they specifically sign a document assuming that responsibility. He can imagine a situation where an 18 year old gets in a serious accident and ends up in the hospital. If that person says their parents won't be paying and they can't be declared indigent for the purposes of the CAT Fund, it seems the hospital would not be paid. **Senator Bock** asked for a clarification about this part of the resolution.

Mr. Poinelli responded that if parents are still claiming their children as dependents on their tax returns after they turn 18, they should have some responsibility to cover medical expenses. If the claim is large, then they could still file for medical indigency. Part of that responsibility deals with reimbursement back to the county, which an 18 year old may have limited ability to do. This also deals with liens; if the parents are responsible then the county has the authority to file a lien on their property. This, he feels, is fair to the taxpayers for the counties to have that ability for purposes of collection.

Senator Bock stated that now he is even more concerned. Parents, who have no ability to control an 18 year old, are placed in the position to be responsible for them in this way. He doesn't think simply recognizing someone on a tax return should be the deciding factor; recognizing the benefits provided to the family when declaring a child as a dependent for tax purposes are relatively small compared to these consequences. **Senator Bock** asked where the legal basis is to make parents responsible for medical costs of an adult child.

Mr. Poinelli responded that he doesn't know if there is a legal basis or not. There is a requirement that students attending colleges and universities have insurance either on their own or through their parents. The Board wanted to carry that idea forward because someone needs to have some responsibility. **Senator Bock** stated that he understands where this responsibility fits into an ethical framework, but legal responsibility is different. He asked what happens to a million dollar hospital bill of a patient who is 18. The parents are not legally responsible for the debt and it seems it may be easy enough for an 18 year old to file bankruptcy and dispose of the debt. **Mr. Poinelli** responded that in all likelihood, an application would be submitted, either by the patient or by a third party. The county commissioners will investigate the case and make a determination of indigency. If they are found indigent, then the county will pay the first eleven thousand dollars and the rest will come out of the CAT Fund. The responsible party will have to pay the bill if they are able to pay it off in sixty months.

Senator Lakey stated he was comfortable with considering the parents' income when determining whether or not a person is indigent. He is more uncomfortable with the possibility that after a payment is made, a lien is placed on the parents' house. He asked Mr. Poinelli to respond. **Mr. Poinelli** replied that the determination of indigency is based on the applicant or whoever files on behalf of the applicant. If there is potential that some payments could be made by a family member, the law currently allows for a lien to be filed. The law allows for an individual to pay the reimbursement, if possible, and a lien placed on any property they own. He stated he wanted to make it very clear that he is not aware of any county in the state of Idaho that has ever kicked anyone out of their house. If there is a sale on the property, then the individual has the opportunity to settle with the county; that has happened. **Senator Lakey** asked if some counties are currently filling liens on parents' property if the child is 23 and going to school and being claimed as a dependent. **Mr. Poinelli** responded no they are not. Somebody has to have some responsibility at some point. This should be the parents; particularly, if they are claiming their child for tax purposes.

Senator Martin stated that they have been using the ages 18 and 23 as examples, and then asked if age mattered when claiming a child as a dependent. **Mr. Poinelli** responded that if someone claims someone else as a dependent, but they are clearly an adult, there could be some responsibility placed on the person claiming the dependent. **Senator Martin** asked for a clarification that it doesn't matter what the age of the person is. **Mr. Poinelli** responded that was correct. He focused on the age of 18 years because the Board hasn't had any experience with anyone over that age. **Senator Martin** stated that he heard Mr. Poinelli say that the counties are not currently doing liens, and asked if this passes could they start doing them.

Mr. Poinelli responded that the counties are currently doing liens on any applicant. By law, they are required to file an automatic lien within thirty days of the application for necessary medical services. He was referring earlier to the counties forcing people to sell their property, which is not happening. **Senator Martin** referred to language on page 4 and page 8, "starting on the date of necessary medical services are first provided." He asked Mr. Poinelli to clarify what this is referring to. **Mr. Poinelli** responded that when a county receives an application and begins an investigation, it is usually a minimum of thirty days after services were provided. Then it goes to the Department of Health and Welfare for their determination of eligibility for Medicaid. It then comes to the county so there could potentially be seventy-five days after services were provided. The law has always been that the process starts when necessary medical services were provided, so the county has to take a retroactive look at the individual to determine whether they are indigent and whether they have resources to pay. They look at the window between that time and the case is determined. **Mr. Poinelli** stated they are trying to clarify here that the process begins when services are received.

Senator Guthrie asked if the child was wealthy and the parents were broke, would the counties come after both parties and could they place a lien on the parents' house. **Mr. Poinelli** responded that the first thing the county commissioners do is look at the applicant. If the applicant has the ability to pay, then there is no need to look to other parties such as the parents. **Senator Guthrie** referenced the concerns of Senators Bock and Lakey and stated that by the definition of dependent, the individual depends on the parents and he sees no problem with having the parents be responsible for them. However, because this is something new, there may be a need for an effort to inform people of this. It may be reasonable for a parent to claim their child as a dependent, but they may not understand that they are taking on this responsibility in doing so. He asked if there were any educational efforts to inform people because there could be potential problems.

Mr. Poinelli responded that there would have to be an educational effort. That effort needs to take place at two different levels, in his view. The first is the county level. People should be informed when they come in to fill out a non-emergency application. The county indigency director can help with an educational effort. The other level should be at the hospital where a lot of applications come in, as third party applicants, where the hospital files on behalf of the individual.

Senator Lakey inquired about third party applications. **Mr. Poinelli** responded a significant majority are third party applications. **Senator Lakey** asked if a person in the hospital did not want to submit an application, and neither did the parents of the person, could the hospital still do it. **Mr. Poinelli** responded that the hospital has the authority by statute to file an application on behalf of the person in order to protect their interest. The individual doesn't necessarily have a say in the matter unless they cooperate and most of the time they do. The individual doesn't have the ability to withdraw; if they did, the providers would have an opportunity to file. **Senator Lakey** stated that he is uncomfortable holding parents accountable under third party applications.

Senator Hagedorn inquired if the Idaho Hospital Association had weighed in on this and if they had commented on the changes made on page 6, lines 38 through 40. **Mr. Poinelli** responded that they had weighed in. They testified in favor when this bill was before the House. The changes made in this section were made at their recommendation to provide more time for them to submit medical records to the county.

Senator Bock inquired if anything in this bill changes the status quo with regards to liens. **Mr. Poinelli** responded that was correct; there are no changes to liens. **Senator Bock** asked when Mr. Poinelli talks about the liens and the potential parental responsibility, if he is talking about the way the law is currently, without the passage of this bill. **Mr. Poinelli** responded that the CAT Board doesn't have any way to suggest that people are dependent for the purposes of collecting payment for medical claims. If someone is claimed on someone else's taxes, then it seems there is someone who wants to have some responsibility for that person. The question is should the county and the state bear the ultimate responsibility.

Senator Lakey inquired if the change in the definition of obligated person on page 3 is what takes the parents of a dependent into the lien world. **Mr. Poinelli** responded that the obligated person could be the applicant or the parents of the applicant.

DISCUSSION:

Senator Bock stated that he believes Senator Lakey has hit on some points that are concerning. He is not automatically predisposed to killing the bill, but he would like some reassurance, prior to a vote on the floor, that people who are not legally responsible are not getting shoehorned into assuming this responsibility. **Senator Bock** referenced page 3 lines 42 to 44: there seems to be an ambiguity with the reference to someone who is legally responsible, but that may not include the parents. It seems that the ambiguity may create problems for the counties in the future that will need to be addressed.

Senator Hagedorn commented on the same lines in the bill. He stated most of this was existing language and he hasn't heard any complaints about using the lien system. It has been a standard operating procedure for many years. The added language states "including, but not limited to, parents of minors or dependents," which better clarifies that line. He thinks the lien issue is a separate issue and, if it is a problem, then he would expect the counties or individuals to come forward, but he hasn't heard complaints. **Senator Bock** responded to Senator Hagedorn and stated that he thinks the existing language is fine. It is common sense that the only person obligated is a person who is legally responsible. There may be various ways a person can become legally responsible for another person; for example, upon admittance to the hospital, a person signs a document saying they are responsible for the treatment of their 19 year old son or daughter. However, by suggesting that a person is legally responsible for the medical expenses of another person simply because they have claimed that person as a dependent for tax purposes, creates an ambiguity. Dependents, in general, are not necessarily the legal responsibility of the parents, even though they have been declared as dependents on a tax form.

MOTION:

Senator Guthrie moved to send **H 98** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. Speaking to the motion, **Senator Guthrie** commented that the health care system has issues. When people present as indigent it effects providers as well as county and state tax payers because of the choice they have made to not purchase insurance. He thinks that when a parent claims their child as a dependent after they have turned 18, that is an indicator that they would like some responsibility for them.

SUBSTITUTE MOTION:

Senator Bock made a substitute motion to hold **H 98** in committee to a date certain, and suggested Thursday. He stated that would give Mr. Poinelli some time to get them some more background on the bill before they sent it off to the floor. **Senator Lakey** seconded the motion.

**ROLL CALL
VOTE:**

Senators Heider, Martin, Lakey, and Bock voted aye. **Senators Hagedorn, Guthrie and Nuxoll** voted nay. The substitute motion carried 4-3. **Chairman Heider** directed Mr. Poinelli to provide more information to the committee.

H 239

Mark Johnston, Executive Director of the Idaho State Board of Pharmacy (Board), presented **H 239** relating to Pharmacists. **Mr. Johnston** stated he was here to request that the committee send **H 239** to the floor with a do pass recommendation.

Last fall, the New England Compounding Center tragedy occurred whereby 48 Americans were killed and hundreds more were infected, including an Idahoan, due to a tainted, injectible, compounded product. Boards of Pharmacy across the nation have since taken legislative action to strengthen compounding, drug outlet, and distribution laws. At the time of this crisis, the Idaho State Board of Pharmacy was already working on H 17, now approved by the both floors, which allows the Board to more tightly regulate non-resident drug outlets, including those that distribute sterile, injectible, compounded product into Idaho. As this tragedy unfolded after the agency deadline to submit Legislative Idea Forms to the Governor for approval, the Board concentrated on the facets of this tragedy that H 17 could affect. The next step in the Board's plan to address the outcomes of this tragedy include:

- tighter regulation of sterile compounding pharmacy practice standards, for which the Board already has statutory authorization to address in rule, and
- addressing the distribution of compounded product in the absence of a valid patient specific prescription drug order.

A closer look at Idaho Code reveals that a pharmacist's compounded product shall only be dispensed pursuant to a valid prescription drug order of a practitioner, thus rendering a pharmacy's distribution of compounded product illegal, as the absence of such a patient specific prescription drug order renders the compounded product as manufactured product. In January, the Board held a negotiated rulemaking session at an open, public meeting of the Board, as printed in the Idaho Administrative Bulletin.

The Board heard oral and written testimony from prescribers and pharmacists, who implored the Board to write exceptions to law that would allow distributions of a pharmacist's compounded product thus improving public safety. Examples of such distributions include diagnostic materials, drugs temporarily unavailable from the manufacturers, nuclear pharmaceuticals, and drugs used in practitioner procedures. This bill would grant the State Board of Pharmacy statutory authority to promulgate rules that legalize limited exceptions to the definition of manufacturing.

Such pharmacy distributions are currently statutorily restricted to:

- limited quantities by retail pharmacies to practitioners for office use or
- for emergency medical reasons.

These limitations remain untouched by **H 239**, with the exception of expanding such limited distribution to all pharmacies, as many compounding pharmacies are registered as limited service pharmacies, not retail pharmacies. Thus, any potential future rules would not exceed these tight, statutory restrictions.

MOTION:

Senator Bock moved to send **H 239** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Senator Bock will carry **H 239** on the floor.

ADJOURNED:

There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:56 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary