

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, January 21, 2014

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Tippetts, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking

**ABSENT/  
EXCUSED:** None

**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 Tippetts** called the meeting to order at 1:30 p.m., welcomed everyone and went over the agenda.

**PRESENTATION:** **Steven Weeg**, Chairman of the Board, Your Health Idaho, provided the background of the creation of a marketplace for Idahoans, namely, Your Health Idaho (YHI). He said the Idaho Legislature gave YHI the duty of keeping local control of the Health Exchange (Exchange), which they have accomplished. YHI has prevented federal intervention in Idaho. He said the Exchange was working for Idahoans. Twenty thousand Idahoans have chosen to enroll in a plan and the number is growing. Through YHI, Idahoans have the resources available to make a choice that works for them. He said we are focused on thoughtfully completing our own Idaho-based technology solution. We will have an Idaho solution available for the 2015 enrollment period.

**Mr. Weeg** presented the annual report for YHI (the entire report can be found on the website: [www.yourhealthidaho.org](http://www.yourhealthidaho.org)). He said that H 248 was passed in March 2013 as a means of limiting federal involvement in Idaho. One month after the legislation was passed, Governor Otter appointed a 19-member board (Board). They had no staff, funding, policies and procedures, organizational structure, or office. Each Board member brought a diversity of expertise and experience that let YHI move quickly and efficiently to set up a functioning exchange in under six months. He said that in keeping with the intent of the legislation, the Board adopted a mission statement, which fully illustrates their dedication to running an Idaho exchange. The mission statement states that the goal is to maintain control of Idaho's health insurance marketplace at a minimal cost to its citizens. The mission statement drives the decisions of the Board on a daily basis. **Mr. Weeg** said they were providing a much needed resource to thousands of Idahoans who wanted health insurance.

He talked about their accomplishments and said their success was in large part due to the flexibility afforded to them as a State-based Marketplace. He indicated that 20,000 Idahoans were enrolled. The staff was smaller and the grant funding was low compared with other state exchanges. In addition, a plan was identified for setting up our own marketplace for sustainability in 2016. Another accomplishment was the establishment of a website to act, for this first year, as a portal to the federal exchange. Idaho-based resources for consumers were created to make up for the shortcomings of the federal website, including tools to estimate tax credits, find consumer assistance and compare plans. A network of over 700 agents and brokers and 300 In-Person Assistants (IPA) was built to help Idahoans. The YHI completed their first financial audit.

**Mr. Weeg** pointed out that in comparison to federally managed states, Idaho was benefiting in many areas. He said that in particular, plans on the Exchange were regulated by the Idaho Department of Insurance; agents and brokers were the primary resource for consumers; and the initial consumer fee was 1.5 percent. In federally managed states, the consumer fees were set at 3.5 percent. **Mr. Weeg** said that the IPA undergo rigorous training and background checks.

Bylaws, governance policies and an organizational structure have been adopted to ensure oversight over the work of the Exchange. However, the YHI moved swiftly to create a governance structure and realized too late that their conflict of interests and procurement policies needed to be tighter. They made the necessary changes to ensure that their organization would not make the same missteps in the future.

**Mr. Weeg** said YHI sought security verification and has confirmed with the Director of the Center for Consumer Information and Insurance Oversight (CCIIO) that all "live" functions of the website have passed the same security testing as the Medicare system. The remaining testing will be for functions of the website that were not yet "live". In closing, he said they had a large challenge. He stated that they can be proud of the work done by the Board and the staff. He then introduced Amy Dowd.

**Amy Dowd**, Executive Director, Your Health Idaho, gave the second half of the presentation on the Annual Report of the Health Insurance Exchange. She thanked Chairman Weeg for his support. She said she wanted to share some important updates. She said the best news was that the enrollment numbers indicate that Idahoans are interested in the marketplace and they have chosen to enroll. She indicated the data showed that all age groups were participating and enrolling, including the "young invincibles", which they always worried would not be interested. People are finding value in the silver plans and interestingly 66 percent are choosing these plans.

She said that in looking at nearby states, our State-based Exchange was in line with or doing better. She attributed Idaho's success to the over 700 agents and brokers certified to enroll Idahoans in a plan. She noted the number of applications compared to enrollment in Idaho was a smaller margin than in many states. She attributed this to the resources they have made available to help Idahoans through the process. Idaho's marketplace is lean and moving at a much faster pace, but our numbers are still in-line with many of our peers. **Ms. Dowd** pointed out that when discussing enrollment, one area that deserved specific mention was the success of the IPA Program. She said these were the resources that were helping people every day. She pointed out that in contrast to federally managed states, Navigators (who took over the role of agents and brokers) fill the consumer assistance function and the federal government chooses the organizations, level of funding and level of security screening. The consumer call center was available in less than six weeks. The call center function allows YHI a pulse on the customer, agent and broker, and

IPA issues in Idaho. She said they found that communicating neighbor-to-neighbor was the best way to reach Idahoans. YHI conducts outreach efforts, which include enrollment and community events, radio ads, printed materials and digital media. They also use neighbors, local weekly newspapers, and sharing success stories on Facebook to disseminate information.

**Ms. Dowd** said there was much work to be done in the future. She said YHI was exercising due diligence for Idaho to avoid issues the federal marketplace experienced. She said that in building a plan for technology solutions, they knew they needed a vendor that would be the most efficient and sustainable in the long run. They have hired an independent expert who will review and audit the security of Idaho's technology solution. The technology vendor will supply security experts on site. The goal of YHI is that they will be self-sustaining by 2016 and will require no state funding. She said Idaho has successfully met all requirements to keep our Exchange controlled in Idaho.

**Vice Chairman Patrick** asked about the stringency of security background checks for those handling information. **Ms. Dowd** said the background checks were equivalent to that of the Federal Bureau of Investigation (FBI).

**Senator Schmidt** had a conversation with **Ms. Dowd** regarding the different categories outlined on the chart entitled, "Total Idaho Marketplace Applications, Eligibility, Determinations and Marketplace Plan Selections" on page 20 of the 2013 Annual Report. **Senator Schmidt** asked who received the product, as the numbers didn't all add up. He said that a little less than one-tenth of the applicants were eligible for Medicaid. He asked for an explanation of "pending other". **Ms. Dowd** said that "pending other" indicated a person's determination or where they were in the application process. She said a person's application may need follow-up information before being enrolled, for example. **Senator Schmidt** asked **Ms. Dowd** how many people needed financial assistance after consultation and the completion of the application in Idaho, compared to those in other states. **Ms. Dowd** said she would have to follow up on this comparison.

**Senator Martin** said he appreciated the fact that YHI mentioned some of the missteps.

**Senator Lakey** and **Ms. Dowd** had a conversation about the definition of open enrollment and tracking the effectiveness of events being held at libraries and other venues.

**Senator Guthrie** asked **Ms. Dowd** about providing more detail about contracts being awarded without the Board knowing. He asked if there was another contract for that same position and what the hourly rate was. **Ms. Dowd** said YHI had acknowledged they moved too quickly. She said they have put more control over executing policies in the future in order to prevent further problems. Idaho contractors are being used as much as possible. **Senator Guthrie** commented he was not sure his question was answered. He stated his other question was on the assessment fee of 1.5 percent and when the Board projected it would change. **Ms. Dowd** said the 1.5 percent assessment fee was determined by the Board and the intent of that amount was to build their reserves. That figure will need to be revisited on an annual basis. She said there was no determination as to what the fee would be in the future. She indicated that every decision she makes every day makes her think how this will effect long-term operating costs.

**Senator Cameron** asked **Ms. Dowd** about the cost drivers and what was needed so as not to increase the 1.5 percent assessment fee. She said that enrollment and the type of plan and premium that was being selected were cost drivers. The largest ongoing operational costs were the technology system and the call center. They

discussed that given the enrollment numbers, the choice of plans, and a desire to keep the size of the staff low, Idaho was doing rather well. **Senator Cameron** said because of this 1.5 percent assessment fee being less than projected, possibly the YHI would not increase this fee. **Ms. Dowd** said she did not want to speculate on a specific number. They also discussed how Idaho was better-suited to protect Idahoans' personal information because Idaho is a State run exchange.

**Senator Cameron** mentioned he wanted to add to Senator Schmidt's perspective about "pending other". He explained that meant that an applicant went through the process, but some of the individuals who started applying, started over. They also may be people who found out they were not eligible for any assistance. He added, we have a large number of individuals who need financial assistance. He said an agent would use YHI calculators, find out the person may not qualify so they would not go through the Exchange and would go to a carrier of their choice.

**Senator Martin** asked **Ms. Dowd** if she would define "personal assister", "navigator" and "agent" and asked what we were doing in Idaho. **Ms. Dowd** explained there was a clear distinction and said that an assister was only allowed to answer questions about what was needed to enroll, assist a person with self-enrollment, how to find the website or how to find help. She said that as soon as an individual asked for any advice about which plan to choose, that person was routed to a broker or agent. Idaho does not have "navigators" for 2014, but it is a federal requirement for the federal exchange.

**Senator Lakey** wanted to know how people were routed to a broker. **Ms. Dowd** explained there were several routes. One route was through a call center. Another would be a referral to an agent through a Personal Assister. She said there were tools on the website to assist an applicant. She indicated there was a website called [www.healthcare.gov](http://www.healthcare.gov) that helps individuals find a broker near where they live. The list of agents and brokers is rotated on the YHI website through an automated rotation system. However, the list depends on products the broker is licensed to sell. **Senator Lakey** and **Ms. Dowd** discussed the goal of YHI to open its door this fall, and significant milestones that had to occur before going live.

**Chairman Tippetts** talked about the national concern that there would be low enrollment of the young and healthy, and he commented that Ms. Dowd seemed somewhat pleased that 24 percent of enrollees were in the 18 to 24 age group. **Ms. Dowd** said Idaho's percentage was slightly higher than other states. She said that if the enrollments in that age category continue to grow, it is very encouraging. **Chairman Tippetts** thanked Steven Weeg and Amy Dowd for their presentation.

**PASSED THE  
GAVEL:**

Chairman Tippetts passed the gavel to Vice Chairman Patrick to introduce the presenters for the review of the rules being heard.

**DOCKET NO.  
59-0103-1401**

**Contribution Rules for the Public Employee Retirement System of Idaho (PERSI) - Temporary Rule Review.** **Don Drum**, Executive Director of PERSI, presented this docket. He said the reason for adopting this temporary rule was to delay a scheduled increase in contribution rates for employers and employees. He said actuarial valuation indicated it was appropriate to delay the currently scheduled increases. The next increase would begin July 1, 2015 rather than July 1, 2014. He said we were over 90 percent funded and below the 25 percent amortization level required by the State.

**MOTION:**

**Senator Martin** moved to approve **Docket No. 59-0103-1401**. **Chairman Tippetts** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
59-0106-1301**

**Pending Rules Review - Retirement Rules of PERSI.** **Don Drum**, Executive Director of PERSI, presented this docket. He said the proposed rule added new Rule 174. As a qualified governmental plan under the Internal Revenue Code, PERSI is not subject to the Employee Retirement Income Security Act (ERISA), but is subject to the pre-ERISA (as of September 1, 1974) vesting requirements (26IRC § 411(e)(2)). This rule sets out PERSI's good faith interpretation of those requirements. There were no changes to the pending rule and it is being adopted as originally proposed. This rule was approved by the PERSI Board pursuant to the receipt of its determination letter from the Internal Revenue Service (IRS) that it is a qualified plan. The determination letter was subject to the adoption of this rule. The proposed rule was published in the September 4, 2013 administrative bulletin and PERSI received no questions or comments. The rule provides that if the plan is terminated or there is a complete stop to contributions, then no one who was not already a member is eligible to become a member; no further benefits accrue and the accrued benefits of all non-vested members shall vest.

**MOTION:**

**Senator Goedde** moved to approve **Docket No. 59-0106-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
18-0104-1301**

**Rules Pertaining to Bail Agents.** **Tom Donovan**, Deputy Director, Department of Insurance (Department), presented this docket. He said the Department conducted negotiated rulemaking and the notice of intent to promulgate rules was published in the Administrative Bulletin on July 3, 2013, and also on the Department website notifying potential interested parties of a public meeting to be held on July 17, 2013. The public meeting was held. However, no one appeared. Additionally, a Department representative had discussed this rulemaking with bail industry groups and members in the spring to let them know their intent, following a January 2013 Idaho Supreme Court decision that prompted this rulemaking. The Department did not receive any requests for a hearing and did not receive any comments in response to the proposed rulemaking.

He detailed the background for rulemaking and said that the Department and a licensed bail agent, Two Jinn, Inc. (doing business as (DBA) Aladdin Bail Bonds), had a disagreement over the meaning of Idaho Code § 41-1042 that eventually went to the Idaho Supreme Court. The case name and citation to it are listed in the notices on pages 163 and 164 of the Committee's rule book. The substantive portion of the rulemaking appears on page 165 of the Commerce and Human Resources Committee Pending Rule Book and seeks to strike or repeal all of the language in section 016 as a result of the supreme court's decision. The statute, Idaho Code § 41-1042, enumerates certain collections and charges that are permitted by a bail agent and provides that other charges not set forth are prohibited. The Department had believed that the statute prohibited bail agents from charging or requiring as a condition of the validity of the bond that guarantors agreed to pay any surrender charges incurred. The bail agent sought to have the matter heard before the Director which was done via an outside hearing officer. The Department prevailed and also won on appeal to the district court. However, the bail company appealed the district court's ruling to the Idaho Supreme Court which reversed the order. The court said that requiring a party to contract to pay for bail surrender or apprehension costs was not the same thing as and not in violation of the statutory prohibition to "directly or indirectly" charge or collect any money or valuable consideration. **Mr. Donovan** said he knows of no opposition to this rulemaking, and the Department respectfully requests approval of this docket.

**Chairman Tippetts** and **Mr. Donovan** discussed changing the statute because of the ruling of the court. They talked about the view of the Department not being inconsistent with current statute and possible opposition. **Mr. Donovan** said that bail agents within the industry differ on issues. **Chairman Tippetts** asked about the cost of recovery and if that would drive up the cost of bail bonds. **Mr. Donovan** said he didn't think so, but he did say the Department thought there would be some abuses, but he was not aware of any recent examples. A bail bondsman could take advantage of some people when they entered into a bail transaction. The supreme court instituted a committee concerning bailbond issues and it seems that any legislative change would be through that committee.

**Senator Cameron** said that according to his recollection, there was significant opposition to this rule last year, and now there is none. **Mr. Donovan** said that the rule language was put into place in 2011. He said they have had a few agents that disagreed and that Senator Cameron was correct. They also discussed the public hearing that was held on January 17 and that no one appeared even though the Department had conducted the negotiated rule-making process and they had considerable contact with certain members of the bail industry. **Mr. Donovan** said they published the proposed rulemaking in October, which was a month before the pending rule, and received no comments about the proposed rulemaking. They received no feedback pro or con.

**MOTION:** **Chairman Tippetts** moved to approve **Docket No. 18-0104-1301**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 18-0123-1301** **Rules Pertaining to Idaho Insurance Holding Company System Regulatory Act.** **Tom Donovan**, Deputy Director, Department of Insurance (DOI), presented this docket. This rulemaking follows enactment last year of H 197 updating chapter 38, title 41 dealing with insurance company holding systems. Like H 197, this rulemaking reflects an update to an existing rule pursuant to the revised National Association of Insurance Commissioners (NAIC) model regulation; however, unlike H 197, the DOI is not repealing the old rule and rewriting it, but rather amending the existing rule.

**Mr. Donovan** said the Department again conducted negotiated rulemaking with the notice of intent to promulgate rules published on July 3, 2013. A public meeting was held on July 17, 2013. Additionally, the Department prepared a draft of the rulemaking for discussion at the public meeting and had it available at the meeting, and circulated it to interested parties just prior to the meeting. The Department also received written comments from the American Council of Life Insurers (ACLI) indicating that they supported adoption of the NAIC Model Holding Company Act, the National Association of Mutual Insurance Companies (NAMIC) related to exemption language and confidential treatment of Form F, and United Heritage Mutual Holding Company concerning various issues. At the July 17, 2013 public meeting, one interested party attended on behalf of two insurance companies and made a couple of brief comments on behalf of them to which the Department responded in a satisfactory manner. Following the public meeting, the Department continued to work with interested industry representatives on language for the proposed rulemaking, utilizing the earlier initial draft. In particular, the Department worked with United Heritage Mutual Holding Company, an Idaho company with subsidiary insurance companies in Idaho and Oregon that are licensed in multiple states. A number of points were covered, but the end result was that all questions and concerns were resolved prior to publication of the proposed rule. The notice of proposed rulemaking and substantive rule changes were published in the administrative bulletin on October 2, 2013. The notice of adoption of the pending rule without substantive changes was published in the December 4, 2013 Administrative Bulletin.

With those preliminary remarks, **Mr. Donovan** said he would like the Committee to turn their attention to page 168 of the 2014 pending rulebook where the changes begin. He said the first couple of pages of the substantive changes have some general rulemaking cleanup provisions, such as changing the title of the rule and including some of the standard sections to conform with normal agency rulemaking protocol. He gave an example in section 000, which added legal authority; 004 incorporation by reference; 005 office hours and mailing address, public records act compliance; and in section 010 definitions. He said these were not new definitions, rather they were the same as those that appear in section 014 of the current rule. However, he said the Department was moving them to section 010, again to conform with standard rulemaking citation protocol in section 011. He pointed out that throughout the entire rulemaking process, references to Form F were added which was the new Enterprise Risk Report. The Report provided for the enactment of H 197 last year. He asked the Committee to note in this section and throughout the rulemaking, that code reference corrections have been made to match the corresponding citation. Changes were made to recognize the electronic nature of filings with the Department within Chapter 38, Title 41 of Idaho Code on page 169 and page 170. New subsection 04 provides who is to file (the notice of acquisition of an insurer or Form A), and when a hearing may be held on a consolidated basis.

He said that on page 171 there's a new section 013 based on a new model rule, which is language that applies if a company cannot supply information on a particular form. The company is to identify the information, state why it cannot supply it and seek an extension of the deadline, requesting an extension of time for filing the information document or report to a specific date. The request for extension would be granted unless the Director, within 28 days, enters an order denying the request. At the bottom of the page he pointed out the definitions that were stricken which were simply moved to the new section 010. A new section 015 clarifies that the specific provision in the model act for investing in subsidiaries is in addition to any other authority in the insurance code. On page 172, new section 017 provides the express requirement to notify the Director of any changes in a Form A acquisition of control filing. New section 018 applies to a situation where there is an acquisition of a person that controls a domestic insurance company and how the names should be designated on Form A. At the very bottom of page 173 and the top of page 174 language has been taken out regarding providing an exemption because the exemption language is unnecessary and is already covered in the model act codified in Idaho Code § 41-3809(1) dealing primarily with foreign (i.e. domiciled in a state other than Idaho) companies. Striking this section also conforms the rule to the updated model regulation on page 175, applicable to a Form D (prior notice of a transaction among affiliated companies).

The language tracks the model regulation and is consistent with what has been requested by the Department in the past concerning specific items to be included in cost sharing services and management services agreements among affiliates. This included identifying the parties, setting forth the methods to allocate costs, requiring timely settlement of amounts due and not less frequently than quarterly, specifying that all books and records of the insurance company are to remain the property of the insurance company. It specifies that if the insurer is placed into receivership, that the Director steps into the shoes of the insurance company and is entitled to all the rights of the insurer under the agreement. All the books and records shall be immediately available to and turned over to the Director upon the Director's request in any receivership. The affiliate has no automatic right to terminate the agreement upon receivership and that the affiliate shall continue to maintain all systems programs or other infrastructure notwithstanding the Director stepping into the shoes of the insurance company. The affiliate is entitled to all the rights of the insurer under the agreement.

**Mr. Donovan** went on to say the new section 026 specifies that the ultimate controlling person of an insurer is required to file the Enterprise Risk Report. Form F, section 027, strikes some unnecessary language and clarifies that any request of the company for approval of extraordinary dividends shall include the information already contained in the rule. The second half of page 176 over to page 177 contains more cleanup and technical correction language. Starting in the middle of page 177 the actual forms are set forth that include updates consistent with the revised model language and cleanup of some of the existing language, with the addition of the new Form F at the end. On page 181, item 13 is contained within Form A where the acquiring party of an insurer is the ultimate controlling person and agrees to submit a Form F. Form B starts on page 183 (the annual registration statement) and on page 184 the lead-in language under item 4 is applicable where the ultimate controlling person is an entity. The new language at the end of the paragraph is where the ultimate controlling person is an individual. On page 186 there is new language under item 8 concerning financial statements and exhibits. Language at the top of the page applies if the ultimate controlling person is an entity and language at the bottom of the page concerns the financial statement when the ultimate controlling person is an individual. Existing language and some of the new language authorizes the director discretion to accept a different format for financial statements. The bottom of page 187 and page 188 provides for Form C, which is a summary of the registration statement and sets forth changes from the prior year. Form D, Prior Notice of Transaction starts midway through page 189 and includes a description of the transaction referenced in item 2. On page 190 there are two new provisions requiring notice, and a reference as to how the transaction meets the "fair and reasonable" standard referenced in the statute. Item 5 includes reinsurance pooling agreements within the scope of reinsurance transactions to be included. Item 6 concerning management agreements, service agreements and cost-sharing agreements, is also included. On page 192 there is a brief statement regarding the effect upon the insurer's policyholder surplus, whether the allocation methods are based on cost or market, and a statement regarding compliance with the NAIC accounting practices and procedure manual regarding expense allocation. Pre-Acquisition Notification Form E, regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in the State or by a Domestic Insurer, starts on page 193 and is a form that is very rarely applicable because, in most cases, an exemption set forth within the code for the requirement to file already exists. For example, if the transaction is already covered by a Form A filing and is for investment only and there's a disclaimer of control, or perhaps most typically where companies are already affiliated and have already filed, the new language expressly requires a statement regarding a determination whether the competitive standards set forth in the statute would be violated and if appropriate, justification. At the bottom of page 194 through page 196 the new Form F Enterprise Risk Report is listed, which, with a new requirement, is all new model language. Item 1 includes requirements for the ultimate controlling person to notify the Department of any listed areas that could produce enterprise risk not otherwise disclosed in the Form B including:



- material developments regarding strategy, internal audit filings, compliance or risk management,
- acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the holding company system,
- changes of shareholders exceeding 10 percent or more of voting securities,
- developments in investigations, regulatory activities, or litigation that may have a significant bearing or impact on the insurance holding company system,
- the business plan and strategies for the next 12 months,
- any material concerns of the holding company system raised by a supervisory college (a collaborative grouping of insurance regulators where there are international operations) as provided for in the recently enacted Holding Company Act,
- negative movement or discussions with rating agencies; and
- identification of any material activity or development that could adversely affect the insurance holding company system.

Item 2 provides that if the registrant has not disclosed information under item 1, the registrant shall include a statement stating to the best of the registrant's knowledge, it has not identified enterprise risk subject to disclosure.

**Mr. Donovan** said he knew of no opposition to this rulemaking and that the Department requests that Docket No. 18-0123-1301 be approved.

**MOTION:** **Senator Goedde** moved to adopt **Docket No. 18-0123-1301**. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Patrick passed the gavel back to Chairman Tippetts.

**ADJOURNED:** There being no further business, **Chairman Tippetts** adjourned the meeting at 2:56 P.M.

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Senator Tippetts  
Chair

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Linda Kambeitz  
Secretary