

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, February 14, 2014

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

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Senators Davis, Mortimer, Hagedorn, Lakey, Bock and Werk

**ABSENT/ EXCUSED:** Vice Chairman Vick and Senator Nuxoll

**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 Lodge** called the meeting to order at 1:31 p.m.

**MINUTES:** Minutes were not approved at this meeting.

**RS 22854C1** **Relating to Standard of Medical Care - Ken McClure**, representing the Idaho Medical Association, explained that this bill is designed to ensure that possible changes in the law that were not voted on and were not anticipated to occur that those cases will not occur. Under the Affordable Care Act there are a number of requirements that Centers for Medicare and Medicaid Services CMS adopted as quality guidelines. All insurers, having plans that qualify under the Affordable Care Act, also adopt their own quality guidelines. These quality guidelines are fine for reimbursement for those programs. The Idaho Medical Association's concern is that these guidelines could become a basis for a malpractice action. Idaho law is very clear that a physician or other healthcare provider is guilty or responsible for injury to a patient or has committed malpractice if he violates the community standard of care.

The community standard of care is the standard of care in that care community. The determination of how someone meets or fails to meet the community standard of care is determined by what a reasonable person with the same training, experience, and skill would do under the circumstances in that community. Communities are different, there is much greater access to more advanced care in some communities than in other communities. It is unfair, particularly in rural Idaho, to hold a healthcare provider to a standard that they cannot meet because they do not have an MRI or perhaps a neurosurgeon available.

The quality metrics that are set forth by CMS and insurance companies can continue to be used for reimbursement purposes; but they do not become a basis for any type of malpractice action. The metrics cannot be used to justify a physician's actions if the physician met the standard, nor can they be used to criticize a physician's actions if the physician has not met the standard.

**MOTION:** **Senator Werk** moved to print **RS 22854C1**. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

**RS 22892** **Relating to Bad Faith Patent Assertion - Mike Reynoldson**, Government Affairs Manager, Micron Technology, stated the purpose of this legislation is to prevent bad faith assertions by non-producing entities, otherwise know as patent trolls. These entities do not produce anything. Patent trolls will acquire certain patents and send mass mailings to industries, such as semi-conductor or car manufacturer industries, informing those businesses that they have violated. In the letter the patent trolls state that they are in violation of a patent and for a simple licensing fee they will not litigate the patent. Businesses will often settle because it is extremely intimidating and expensive to defend against a patent infringement suit.

**MOTION:** **Senator Davis** moved to print **RS 22892**. Seconded by **Senator Bock**. The motion carried by **voice vote**.

**RS 22842** **Relating to the Juvenile Corrections Act - Judge Varin**, National Campaign to Reform State Juvenile Justice Systems, explained that the bill is to refine and improve the juvenile justice system by clarifying a judge's authority to dismiss a juvenile case when a juvenile offender has been granted an informal adjustment. The judge can dismiss a case when the juvenile offender has successfully completed a juvenile drug, mental health, or other authorized problem solving court program. The juvenile will have an opportunity to seek an expungement of their juvenile court records after their dismissal.

**Senator Davis** questioned line 3 of the bill and asked does the court have to be convinced of the threshold burden of proof? **Judge Varin** answered that it is not very clear what that standard is so it would be a preponderance standard. **Senator Davis** asked are the court proceedings an informal give and take between the court and the juvenile. Does it require that the juvenile provide some form of evidentiary proof to the court? **Judge Varin** responded that the juvenile court is a very informal court, some cases might be dismissed while others may have a hearing. How the procedures are handled may depend on the case. The processes and procedures can vary from court to court in the juvenile justice system.

**MOTION:** **Senator Davis** moved to print **RS 22842**. Seconded by **Senator Mortimer**. The motion carried by **voice vote**.

**RS 22872** **Relating to Behavioral Health - Director Armstrong**, Department of Health and Welfare, said this bill will establish Behavioral Health Community Crisis Centers in Idaho. Law enforcement and hospital emergency departments are often the default provider of crisis intervention for Idahoans experiencing behavioral health crises. These centers are part of their overall plan for the renovation and renewal of Behavioral Health System in Idaho. Behavioral Health Community Crisis Centers are specifically designed to provide an effective and efficient alternative to incarceration and hospitalization. The crisis centers are designed to function as transitional de-escalation, stabilization, and community referral services.

**MOTION:** **Senator Hagedorn** moved to print **RS 22872**. Seconded by **Senator Werk**. The motion carried by **voice vote**.

**RS 22886** **Relating to Battery - Emily McClure**, representing the Idaho Medical Association, explained that the Idaho Medical Association had come before the Committee for a print hearing which printed bill **S 1259**. After this bill was printed concerns were raised that some of the language in that version of the bill could interact negatively with other sections of the criminal code in a way that had not been perceived and certainly was not intended.

**Senator Davis** asked is this a consensus bill now. **Emily McClure** answered she believed so.

**MOTION:** **Senator Davis** moved to print **RS 22886**. Seconded by **Senator Hagedorn**. The motion carried by **voice vote**.

**S 1274**            **Relating to Boating Chairman Lodge** stated that Senator Keough has agreed to move her bill to Monday's agenda and also the Committee will approve the Minutes on Monday.

**PAGE GRADUATION:**    **Chairman Lodge** said Kaitlyn Parks, the Judiciary and Rules Committee Page, has been an outstanding Page, went the extra mile in her service to the Committee and we have truly appreciated all of her hard work.

**ADJOURNED:**        There being no further business, **Chairman Lodge** adjourned the meeting at 2:02 p.m.

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Senator Lodge  
Chair

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Carol Deis  
Secretary