MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE:	Tuesday, February 25, 2014
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Tippets, 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 Tippets** called the meeting to order at 1:30 p.m. and welcomed all. He said he was going to put the Gubernatorial Appointment of Kenneth Edmunds first on the agenda in order to accommodate his testimony on the House side.
APPROVAL OF MINUTES:	**Senator Martin** moved to approve the Minutes of February 11, 2014. **Senator Goedde** seconded the motion. The motion carried by **voice vote**.
APPROVAL OF MINUTES:	**Senator Goedde** moved to approve the Minutes of February 4, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.
GUBERNATORIAL APPOINTMENT:	The appointment of Kenneth Edmunds of Twin Falls, Idaho, to Director of the Department of Labor (DOL), to serve a term commencing November 25, 2013 and serving at the pleasure of the Governor. **Kenneth Edmunds** thanked the Committee and said it was a privilege to be appointed to this position. He introduced his wife, Jane, and said she was his greatest support. He has spent the last several years working with issues on education at the state level. He applied for this position because he thought it would be a chance to work towards development in way that was not possible through education. His overall goal is to build a stronger workforce and economy for Idaho and he said he thought the DOL played a key role. **Vice Chairman Patrick** commented that Mr. Edmunds has done a great job in the Magic Valley working with the Department of Commerce (DOC), the DOL, the community college and the local urban renewal district. **Mr. Edmunds** said he thought the Magic Valley was setting the tone for how economic development should occur and how it can benefit the State. **Senator Goedde** commented that he has seen a willingness for the DOL, the DOC and the Department of Education (DOE) to work cooperatively together. They all have a role in business development and education is a key part. He looks forward to seeing the cooperative effort. **Senator Martin** said he felt a responsibility to mention Mr. Edmunds predecessor, who did an excellent job, and he was looking forward to Mr. Edmunds' tenure. **Mr. Edmunds** stated that Director Madsen was a unique individual who was people-oriented, and it is going to be very difficult to fill his shoes.

MOTION: **Vice Chairman Patrick** moved to send the gubernatorial appointment of Kenneth Edmunds, Director, Department of Labor, to the floor with the recommendation that he be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Heider will carry the appointment on the floor of the Senate.

S 1316 **Relating to Veterans' Preference Points** was presented by Pam Eaton, Idaho Retailer's Association (Association). **Pam Eaton** said this legislation clarifies that private employers may give preference to the hiring and promoting of veterans. She gave a brief overview of what veterans are facing today. She said the United States is presently emerging from a decade of war, resulting in a draw down of combat-ready forces nearing 1 million service members by 2017. Deeper defense spending cuts compound the challenges our veterans will face in the coming years as they readjust to civilian life. Veterans face 20 percent higher unemployment rates than the rest of the population. There are many industries and businesses across Idaho and the nation that are making huge efforts to help our veterans, particularly retailers. **Ms. Eaton** summarized the bill. She said Idaho law already allows for private employers to hire and promote at will, but these laws are being challenged. Her Association wants to give additional assurances that businesses won't end up in court. Idaho Code § 65-503 relating to the rights and privileges of veterans, line 12, says the eligibility for preference includes veterans and disabled veterans, a widow or widower of a veteran as long as they remain unmarried, and the spouse of a service-connected disabled veteran if the veteran cannot qualify for any public employment because of that disability. Public employers already have these specific protections and her Association supports the same protections for veterans.

Chairman Tippets said federal law prohibits discrimination. He wanted to know if there was any conflict with federal law if **S 1316** was passed. **Ms. Eaton** responded that there is already protection, but her Association was trying to stay out of court. The attorneys for the Association said that **S 1316** did not conflict with the federal law. She indicated that the same protection and language has passed in other states and there was no conflict.

MOTION: **Senator Cameron** moved that **S 1316** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**. Senator Hagedorn will carry the bill on the floor of the Senate.

APPROVAL OF MINUTES: **Senator Guthrie** moved to approve the Minutes of February 6, 2014. **Senator Cameron** seconded the motion. The motion carried by **voice vote**.

S 1310 **Relating to Home Owner's Association Fees** was presented by Senator Rice. **Senator Rice** said this bill originated from his constituents. He said that currently home owners associations (HOA) enforce covenants and restrictions in subdivisions by fining individual homeowners for violations of covenants and restrictions. Frequently, these fines are levied despite homeowner attempts to comply with the covenants, and without any process other than a letter informing the homeowner that they will be fined. He gave an example of a homeowner who was notified that her lawn was too yellow. She sought help from Zamzow's and followed their directions. The HOA fined her because the lawn did not turn green quickly enough. She wrote a letter to the HOA and attached the receipt. The HOA ignored her letter and sent out another fine.

Senator Rice explained there is a pattern of some HOAs fining homeowners arbitrarily. The fines are then enforced through liens on the homeowner's real property. This bill puts reasonable requirements in place that protect the homeowner from arbitrary and capricious actions by the HOA and provides a set of standards that courts can use if there is a dispute regarding the validity of the

fine in a subsequent lien foreclosure action. **Senator Rice** said that when a bank takes over a property and prepares it for sale, an HOA will run up a daily fine prior to completion of work to correct the violation. In order to sell the property, the bank pays the fine even though the fine is unjust.

He said this bill sets a balance so that an HOA cannot arbitrarily fine a homeowner. No fine may be imposed for a violation of the covenants, conditions and restrictions (CC&R)s according to the rules or regulations of the HOA unless the authority to impose a fine is clearly set forth in the CC&Rs. A majority vote by the board of the HOA will be required prior to imposing any fine on a member for a violation of any CC&Rs and written notice by personal service or certified mail of the meeting during which the vote will be taken will be made to the member at least 30 days prior to the meeting. In the event the member begins resolving the violation prior to the meeting, no fine will be imposed so long as the member continues to address the violation in good faith until fully resolved. No portion of any fine may be used to increase the remuneration of any board member or agent of the board.

Senator Guthrie stated that if the HOA met once a month and they just had their meeting, they would have almost two months before they could meet on the issue. **Senator Rice** said the HOA board could have an additional meeting if they so chose. **Senator Cameron** asked what the reason was for 30 days instead of 15. **Senator Rice** explained they were choosing a time to allow someone to work on a repair. In addition, it also allows for absentee owners to make the necessary corrections. He said the Board of Realtors felt this was a fair allowance.

Senator Schmidt questioned line 34 where reference is made to written notice by personal service or certified mail and said he thought 30 days was more than necessary. **Senator Rice** indicated that one of the problems they encountered was when there was a local representative for a bank, the notice of the meeting was sent out-of-state or to a national office. This is a trick used to maximize fines by some HOAs. He said certified mail was appropriate and multiple delivery attempts are standard in making sure owners get the actual notice. **Senator Schmidt** pointed out that if certified mail cannot be delivered, then the HOA could not take action. **Senator Rice** said that was a slight possibility, but the reality is that it is possible to find out the actual location where someone receives their mail.

Chairman Tippets asked about parking violations in specific designated areas. He gave an example of when he parked in a marked parking place overnight without a permit and he received a fine. The problem was resolved the next morning when he moved the vehicle. He wanted to know if a fine could be imposed when he parked inappropriately. **Senator Rice** said that a fine could not be imposed under this statute. The HOA would have to seek other legal means. Homeowners need to have the opportunity to correct violations. There are some things an HOA has fined for in the past, and now cannot. This bill will protect homeowners' property rights and give them due process that was totally non-existent. **Chairman Tippets** asked what the options would be to enforce parking in specific designated areas. **Senator Rice** said parking space rules would have to not be a part of owning the lot by the homeowner. The restriction could then be put on the space. Another way, would be the ordinary court process of enforcing covenants. Finding a good middle ground is the purpose of this legislation.

Senator Guthrie referred to Section 1, line 27, that no fine may be imposed for a violation. He said that a fine may be imposed as long as the authority is clearly set forth in the covenants. That is saying the HOA has the right in the CC&Rs to lay out the ground work for levying a fine. He said it looks like the HOA board has full latitude to set that in their CC&Rs and the fine could say anything as far as time frames. He questioned whether there should be a sub-bullet saying all CC&Rs passed by the HOA must be sensitive to the following limitations. **Senator Rice** said that what the bill does is provide that the rule has to be in the CC&Rs. Then, it provides a framework that will allow a court to look and say if the covenant is enforceable or not based on the process used and the circumstances. There are some equitable principles that can cause some uneven enforcement. There are courts that have disparate treatment, depending on the judge. This legislation provides, as a specific statutory process, that these are the standards that have to be met in order to be enforceable in a court. A lien could not be foreclosed upon unless it met these standards. **Senator Guthrie** said he assumed that nothing is grandfathered if this were to pass so that all of the HOAs would have to be sensitive to this. **Senator Rice** replied that was correct and that this legislation provides some boundaries.

Senator Cameron referred to 2(c), line 37 "in the event a member begins resolving" and asked Senator Rice to define that phrase. **Senator Rice** said the violation could be for a number of reasons. He gave an example of dandelions in a lawn. The lawn is sprayed for dandelions, but all are not killed with the first application of spray. A homeowner has begun to remedy the condition. Another example would be when there is a fence that does not meet the requirements. If the homeowner has begun, but not finished, this provides that the homeowner still has to continue to work on fixing the problem until it is actually completed. A homeowner cannot say that they pulled one post and now they can't be fined. The homeowner cannot say they will have to have another notice and then they will pull another post. The homeowner has to actually follow through. **Senator Cameron** asked who gets to define whether the homeowner has begun resolving the situation. Is it the HOA or is it the homeowner? **Senator Rice** said the homeowner will have to show and tell the board what they have done to begin and what they are doing. The board would have to make a determination. If there was a fine imposed, it could end up in court and the court would have a standard that they routinely use to determine who is right.

TESTIMONY:

Georgia Mackley testified in opposition to this bill. She said she was a co-owner of Development Services. She said they manage over 70 associations in the Treasure Valley. A majority of the associations already have a procedure in place for dealing with CC&R violations. The HOAs cannot fine homeowners for violations if the violation is not listed in the CC&Rs. She also said the procedure in place includes sending multiple letters to an owner as well as a final certified letter for attending a hearing or a chance to be heard in front of the board before being fined or having action taken for a CC&R violation. Most people move into neighborhoods and are grateful for the protection the CC&Rs afford the owners so that property values do not decline. She said that by allowing this bill to pass, HOAs will no longer be able to put in place a timely process for dealing with violations. This allows homeowners leeway in having to deal with their CC&R violation.

Senator Schmidt asked where HOAs are defined in statute. **Ms. Mackley** said condominiums are defined, but HOAs are not. **Senator Cameron** commented the definition was located in Idaho Code § 45-810.

John Eaton, Idaho Association of Realtors (Association), said he worked with Senator Rice on this issue. He has had a number of issues with bank-owned

property is where fines have been levied up to $100 per day. Liens are placed on properties that amount to several thousand dollars knowing that the banks have to pay those liens in order to actually transmit the property and get it back on the market. He said this legislation was a common sense solution. He asked for support of this bill.

Senator Schmidt commented that the Association has a concern with liens filed, yet the statute the Committee is considering has to do with the actual functioning of a HOA. **Mr. Eaton** said the actual problem is that there is no oversight on how these fines are placed on the property. Once those fines accumulate, the only mechanism they have to recover those fines is to file a lien. Their concern is how the fines accumulate and the fact that if someone is trying to rectify the problem, they are still accumulating those fines. In their own industry, they have fines that are levied against real estate agents by the Real Estate Commission (Commission). They passed a bill several years ago that says none of that fine money can go for the operation of the Commission. The money has to go for the education of the licensees. The purpose of the bill was to take away the incentive to fine and to build up their operations. **Mr. Eaton** indicated that in the bill, that no portion of any fine may be used to increase the remuneration of any board member or agent of the board.

MOTION: **Senator Martin** moved that **S 1310** be sent to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

Senator Martin commented that most of us live in a neighborhood that has an HOA because we want to keep our neighborhoods pristine and as well-kept as possible. He said that in his dealings over the past 20 years with HOAs, he found them to be very aggressive with regards to their fees and their treatment of situations that could have been resolved easily. He said this bill is a modest effort to reign in and correct a problem he saw for 20 years. **Senator Lakey** said that HOAs do protect property values, but it is a contract, and it is unusual for one party to be able to unilaterally tell the other party that they are in violation of the agreement and then issue a fine every time there is a violation. He is in support of the bill.

The motion carried by **voice vote**. Senator Rice will carry this bill on the floor of the Senate.

S 1311 **Relating to Public Works Construction Management Act** was presented by Wayne Hammon, Executive Director of the Idaho Association of General Contractors (AGC). **Mr. Hammon** said this bill updates Idaho Code to allow for Construction Manager/General Contractor contracts on publicly funded building projects. It does so while maintaining the safeguards and integrity of the public works contracting process.

S 1311 allows for an alternative contracting process on public works projects known as Construction Manager/General Contractor (CM/GC). **Mr. Hammon** said while this may be new to Idaho public works contracts, it is not a new concept. This method is already employed on a daily basis in Idaho in privately funded construction. In addition, CM/GC is a common process for public work projects in many other states including Utah, Nevada, Washington, and Wyoming. In many cases the public entity which owns the project lacks the professional staff to carry out large or complex construction projects. To address this, the Idaho Code was amended in 1998 to allow public entities to hire a construction manager (CM) to provide professional expertise during both the pre-construction and construction phases of a project. When these changes were implemented, the CM process was new and a decision was made to limit

the amount of construction work in which the CM could participate. At that time, this was a reasonable accommodation. Since then, the construction industry has evolved and the CM position has matured and moved beyond the limitations still imposed by our now outdated 1998 statute. The bill keeps the current CM system in place and updates the term to "CM Agent." It also adds a second delivery alternative called CM/GC.

Mr. Hammon indicated that throughout the bill the term "CM" has been replaced with the term "CM Agent" to distinguish this process from the CM/GC process. However, since the bill was printed, some stakeholders have said that they prefer the term "CM Representative." To address these concerns, an amendment has been prepared that replaces "CM Agent" with "CM Representative" should the Committee choose to send the bill to the Amending Order. All of the rules and safeguards that are in effect today for a CM remain in effect for a CM Representative under this bill. CM/GC arrangements allow for the public entity to free itself of much of the risk associated with the construction process. This risk is shifted to the contractor, who instead of just managing the process, is now a true partner with the public owner through the entire development, design and construction phases of the project. Typically, under this type of arrangement, the contractor is bound to a guaranteed maximum price for the total project, assumes the responsibility to control the construction costs, and takes the risk of cost and schedule overruns. While a CM Representative is working with someone else's money, a CM/GC is directly and financially tied to the success of the project. Because the CM/GC is engaged in every part of the project and is allowed to perform some of the construction themselves, they are better able to manage costs and ensure a timely delivery of the project.

Mr. Hammon pointed out that the CM/GC provisions are on page two of the bill. During the pre-construction phase of the project, the CM/GC and CM Representative fulfill the same types of duties and are bound by the same rules. The difference is that the CM/GC is also a licensed public works contractor and may perform some of the actual work once the project reaches the construction phase. Both the CM Representative and the CM/GC are selected and compensated in the same manner and in accordance with public work contracting provisions already laid out elsewhere in Idaho Code. Under either model, the design and engineering must be done in accordance with Idaho Code by licensed professionals. Likewise, both are required to comply with the State's bonding requirements. While the pre-construction process is similar, the differences begin when the project reaches the construction phase. At the bottom of page two, the bill requires the CM/GC to go through an open and competitive bidding process for all construction work, materials and equipment. This extra step is meant to ensure that the project's owner and the taxpayer footing the bill are protected and ensured the best possible price for the work.

Mr. Hammon stressed that while CM/GC may be new for Idaho public works, it is not a new concept. He pointed out that this very room and all of the tenant improvements and interior finishes of the Capitol renovation and expansion were built through a CM/GC contract. Likewise, most of the privately-funded buildings going up all over our state are being built though CM/GC contracts. In addition, **Mr. Hammon** wanted to assure the Committee that the Associated General Contractors (AGC) has reviewed this legislation with multiple stakeholders, including the Division of Public Works, the associations representing Idaho's cities, counties and school boards, and a wide range of individual taxing districts across the State. All have been supportive of these changes and many look forward to exploring the possible savings associated with the CM/GC contracts. **Mr. Hammon** said he believes that this is truly a win-win situation for the contractor, the project's owner, and the taxpayers.

Mr. Hammon said it was brought to the attention of the AGC that some stakeholders prefer the term "CM Representative." The amendment substitutes this wording for the term "CM Agent" in each of the nine locations it appears in the bill. In addition, the amendment removes an unnecessary cross reference and adds language that clarifies that none of these changes are to impact highway construction. Idaho Transportation Department (ITD) already has this authority in Idaho Code § 40-905, and the AGC wants to make sure not to impede its work.

Senator Martin wanted to know why this protection is needed since it is considered best practice now. **Mr. Hammon** replied that the contractor should be involved in a project as soon as possible so they can integrate the entire project, which saves time and money. He said most of the construction that is done in privately-funded buildings in Idaho has been done this way.

TESTIMONY:

Cindy Ozaki, Idaho Falls Auditorium District (District), testified in support of the bill. She indicated her District was funded by the 5 percent tax on hotel rooms in the community. She said her District wants to build an auditorium by using the CM/GC process. She said this process would give them the best design,and that savings could be significant.

Kevin DeKold, CRSA, an architectural firm (CRSA is an acronym for founding principles of the company - Cooper, Roberts, Scott, Architects) from Idaho Falls, testified in support of this bill. He said his company has been using the CM/GC method, which has proven to be very effective and saves money for private industry. He urged the Committee to look at this method in the public industry as well.

Aaron Johnson, Bateman-Hall Construction, testified in support of this bill and said he has participated in the CM/GC method. He indicated that the method works well in private industry and the public sector would be well-served if this method were adopted. He said that when the contractor is not involved in the design phase, that is when change orders begin.

There are two main delivery methods in the public sector. One is a hard bid from a general contractor. The limitation is the general contractor does not participate in the design phase of the building, which puts the risk squarely on the public entity that is contracting that work. The general contractor's interest will align with the architect's and the owner's interests because right after the bid is done, change orders begin as plan deviations occur. A general contractor looks to increase their revenue and there is not a collaboration effort. The other method is the CM Agent or CM Representative, which is the preferred method to protect the public entity. The limitation of that is the CM Agent does not have any power or any authority to make any changes to sub-contractors, because they are directly contracted with the public entity. The CM is the advisor only and cannot participate in the construction nor take any of the risk, which puts the public entity at risk for construction claims, defects or sub-standard work.

Senator Goedde asked Mr. Johnson if he was able to quantify the savings on this type of a project. **Mr. Johnson** said that during the design phase it is important to have the general contractor involved, because it puts the public entity first and foremost and there is a partnership from the beginning. The contractor has the expertise to select the best materials for pricing and the best procedure for construction in order to be cost effective. He was unable to assign an exact savings amount and it varied.

Senator Schmidt stated he thought risk was being shifted and asked if a bond coverage increase was needed. **Mr. Johnson** said by using this method, the risk was usually eliminated in the design phase, which eliminates change orders. Change orders are where the increased expense occurs and could be disastrous to a project when the bond money runs out and the project may not be completed. By having a CM/GC the risk is placed on the general contractor to make sure the project comes in at the number guaranteed. He said whether it is a CM Agent or a CM/GC, his company still takes a reputation risk, which is worth more than the monetary risk.

MOTION: **Senator Lakey** moved that **S 1311** be sent to the 14th order for amendment. The motion was seconded by **Senator Martin**. The motion carried by **voice vote**. Senator Lakey will carry this bill on the floor of the Senate.

S 1355 **Relating to Medical Care** was presented by Ken McClure, Idaho Medical Association. **Ken McClure** said this was a housekeeping bill designed to deal with the effect of quality reporting standards imposed by the federal government and insurers on the standard of care expected of physicians.

In Idaho, a physician is liable if he or she injures a patient by doing something a reasonable physician in the community with similar training and experience would not have done under the circumstances (or does not do something that a reasonable physician would have done). This is called the "community standard of care" and has been the law in Idaho for a very long time. The resources and experience in each community are different.

He pointed out the way physicians are being reimbursed is changing from a fee for service model, or a "piece rate", to a system that gives an incentive for quality outcomes. The Affordable Care Act (ACA) and other federal laws have adopted payment incentives for physicians to do things that the Centers for Medicare and Medicaid Services (CMS) believes lead to quality outcomes and allows physicians to report the outcomes to the CMS. The ACA also requires insurers who provide insurance on the state and federal exchanges to adopt their own metrics of quality. This means that physicians will be getting scored on quality metrics that may or may not be related to the quality of care they are expected to provide in their community. **Mr. McClure** said that because each insurer is to adopt their own metrics, a physician will be held to multiple and probably inconsistent standards. These standards are to be created in Baltimore, Nashville, Houston and Los Angeles and not in Saint Maries, Burley or Salmon. These metrics are not meant to create a standard of care, but are meant to encourage quality, and they are voluntary for each physician.

Mr. McClure noted that these are reimbursement requirements only. The only consequence under federal law is that a physician will not be fully reimbursed. Currently, there is a 0.5 percent bonus. In two years, there will be a 2 percent penalty for not following the ACA guidelines.

This legislation allows these metrics to be used for reimbursement purposes, but affirms current law that the standard of care is established in Idaho communities.

Subsection 2 of the bill affirms that these reimbursement metrics are relevant for reimbursement purposes, but are not relevant to a malpractice claim since they are not established by anyone familiar with the community standard of care in an Idaho community. **Mr. McClure** went on to say this legislation is also fair and even-handed. He said this is not a change in current law, just an assurance that these metrics will not be used to change existing Idaho law.

TESTIMONY:

Patrick Mahoney, Idaho Trial Lawyers Association (Association), proposed an amendment to the bill. He said that a statute should be drafted as narrowly as possible to serve its intended purpose. The purpose of this bill is to deal with a concern that the ACA sets forth third party payor metrics. It sets forth certain guidelines that practitioners have to follow for reimbursement purposes, particularly Medicare and Medicaid reimbursement purposes. He said there was a concern on the part of the Association that there was additional language that would provide fodder for ambiguity. It is unnecessary, and will have some unintended consequences during a lawsuit. He referred to lines 16 through 18 and lines 31 through 33 of the bill. The effect of the verbiage is to establish the local standard of care. Reference cannot be made only to a third party payor guidelines and metrics. Reference cannot be made to regulation, metric or guideline of the United States. The solution is that if the purpose is to limit the language to a third party payor, then put a period after Public Law 11-148, which is the ACA language. That says the local standard of care is not going to be established by referring to payment metrics in the ACA. Another alternative could be to put a comma after the Public Law 11-148. Strike the language all the way up to the next line (or by a third party payor). This will protect local physicians against having a national third party metric used as the standard of care. He urged the Committee to send this bill to the Amending Order.

Senator Lakey said he does not do plaintiff work, but asked if the federal regulation applied to the community standard of care or was it beyond the standard of care that Mr. Mahoney was trying to apply. **Mr. Mahoney** said the way that issue is dealt with in medical malpractice litigation is in presenting expert witness testimony, a physician would describe whether or not following that particular standard or metric or regulation is part of the local standard.

Don Lojek, Attorney, said the bill was overbroad and applied to all people in the medical field. He said he agrees with removal of the language in line 16. He said the bill has created a conflict with all medical professions. In medicine, as a condition of participation in Medicare or Medicaid, health care areas have to abide by federal standards. Idaho is one of two states in the country that have a local standard of care. Anyone seeking to prosecute a medical malpractice case has to show the local standard of care. He said if the language was struck in lines 16 through 18 and in lines 31 through 33, that would align with the Statement of Purpose. He urged that the law be amended.

Mr. McClure pointed to lines 12 and 13 and said that if there is an obligation to follow a federal statute, this legislation does not change the obligation. He then referred to lines 27 through 29 and said he wanted to make clear that if the standard of care in a community coincides with one of the metrics, that fact can be considered. The only thing that is not reported is if there was a 2 percent penalty of non-compliance with a voluntary requirement. He said this bill does not only apply to doctors but to others. He urged the Committee to pass the bill without amendment.

Chairman Tippets said he understands the argument that was made about potential concerns by leaving in the language "by any other law or regulation of the United States or any entity or agency thereof". He said he didn't understand Mr. McClure's explanation referring to the standard of care under this chapter or any other Idaho statute, and asked how this ameliorates the concern that was expressed. **Mr. McClure** explained that if the federal law has a regulation and it is not followed, that is not a determination whether it is a standard of care met under this statute or any other Idaho statute. It is a standard of care set by the federal government. This legislation does not immunize someone from the regulation.

Senator Lakey wanted to know if the intent was that "any federal or other state regulation that applies to reimbursement", be applied in a liability determination. "Are there things beyond that scope that this legislation covers?" **Mr. McClure** said all of the metrics he now knows of are reimbursement metrics. Over time those may find their way into the standard of care as we learn more about evidence-based medicine and how to get better outcomes. Until they do, it is not appropriate for them to be thrust upon physicians who don't yet practice that way in their community. Those are the metrics we are concerned about.

Chairman Tippets asked Mr. McClure to respond to the language on line 16 "by any other law or regulation of the United States or any entity or agency thereof or by another state" and why he would oppose that amendment. **Mr. McClure** said that there are a number of metrics that are now being proposed by CMS. Some metrics are being proposed under the ACA, some are under the Medicare Act and other federal statutes. The ACA is what caused the metrics to multiply.

MOTION: **Senator Schmidt** moved that **S 1355** be sent to the floor with a **do pass** recommendation. **Vice Chairman Patrick** seconded the motion. The motion carried by **voice vote**. Senator Lakey will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Tippets** adjourned the meeting at 3:00 p.m.

Senator Tippets Chair	Linda Kambeitz Secretary