

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 26, 2014

TIME: 3:00 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: 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: **Vice Chairman Nuxoll** called the meeting to order at 3:01 p.m. and asked the secretary to take a silent roll.

RS 22993C1 **Relating to Uniform Controlled Substances:** **Senator Lakey** stated that he is here with a request for unanimous consent to send **RS 22993C1** to the Judiciary and Rules Committee for printing and then to have it come back for hearing. The legislation adds a couple of designer forms of LSD that are being seen in Idaho.

UNANIMOUS CONSENT: **Senator Lakey** requested unanimous consent to send **RS 2293C1** to the Judiciary and Rules Committee for printing. There were no objections.

H 357 **Relating to the Speech and Hearing Services Practice Act:** **Tana Cory**, Chief, Bureau of Occupational Licenses, presented **H 357** on behalf of the Speech and Hearing Services Board (Board). Idaho Code § 54-2908 provides that the Board's membership consists of three speech-language pathologists, two audiologists, one hearing aid dealer, and one public member. **Ms. Cory** explained that the bill amends Idaho Code § 54-2909 which covers what constitutes a quorum. Currently four members of the Board constitutes a quorum, provided that at least one member of each profession and the public member are present. She pointed out that this bill strikes the requirement for one member of each profession and the public member to be present, and it adds the requirement for a member of the relevant profession to be present when any action affecting that profession is taken. It maintains that four members constitute a quorum. She said that although the Board meets several times a year, there are times when an application may be received from someone who has a job pending and is waiting for the license. This bill will allow the Board to be more responsive to those applicants.

Ms. Cory said this proposal was discussed in open meetings of the Board, posted on the Board's website in October, and distributed to interested parties. There has been no opposition to the bill.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

Senator Martin asked for clarification of the purpose for wanting this change.

Ms. Cory explained that they may have someone call and say they have a job pending in the next week, but because of the open meeting law the Board has to have a quorum. If a member from one of the professions or the public member is not available for a week, this could delay convening a quorum, thus preventing that person from going to work.

Senator Schmidt asked if the public member has to be present at every meeting.

Ms. Cory explained that currently the public member is required to be at every meeting. The requirement for the public member to be at every meeting was unique with this Board, as opposed to other boards, and it has caused some issues. This bill would state that someone from the relevant profession needs to be there but not the public member. Someone from the other professions would be there to establish the quorum of four.

MOTION: **Senator Guthrie** moved to send **H 357** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Martin**. The motion passed unanimously by **voice vote**. Senator Heider will carry the bill to the floor.

DISCUSSION: **Senator Nuxoll** asked what issues may have been evident in the House on the floor.

Ms. Cory replied that there were some no votes but there was no debate and she is not aware of any issues.

H 405 **Relating to Drinking Water and Wastewater Professionals: Roger Hales**, Administrative Attorney, Idaho Board of Drinking Water and Wastewater Professionals (Board), explained that this is an independent Board served by the Bureau of Occupational Licenses and regulates and licenses operators of drinking water and waste water facilities and backflow assembly testers. He went on to say that this Board issues different classes and types of licenses depending on the nature of the facility or the system. There is federal oversight of the drinking water operator licensing program based on federal law.

Mr. Hales said that this bill reduces regulation. Currently a water operator's licensee must renew the license each year on the licensee's birthday. If the license is not renewed it is cancelled. Reinstatement within five years requires payment of delinquent fees and proof of the appropriate continuing education. After five years the person is treated as a new applicant and has to pass the exam again as well as comply with any new requirements. Water operators are the only licensees under this Board who are not allowed up to five years to reinstate without the additional requirements and penalties. Originally it was thought that the EPA wanted the reinstatement limited for water operators to two years. That is not the case hence the change.

This legislation was discussed in open meetings of the Board, was posted on the Board's website, and interested parties were notified. There has been no opposition.

MOTION: **Senator Lakey** moved that **H 405** be sent to the floor with a **do pass** recommendation. **Bock** seconded the motion. The motion passed unanimously by **voice vote**. Senator Guthrie will carry the bill to the floor.

PASSED THE GAVEL: Vice Chairman Nuxoll passed the gavel to Chairman Heider.

H 356 **Relating to Podiatrists: Roger Hales**, Administrative Attorney, State Board of Podiatry (Board), explained that the Board is a self-governing board made up of podiatrists and one public member which regulates the practice of podiatry and is served by the Bureau of Occupational Licenses. This bill removes outdated language relating to the establishment of the original Board. He said it also revises language regarding examinations and disciplinary actions. He added that the bill clarifies that the Board's proceedings for discipline, i.e. suspension or revocation of licenses, shall be in accordance with the Administrative Procedures Act. It also gives the Board the ability to grant an inactive license.

Mr. Hales continued that this bill revises language related to the old examination. This Board used to give its own examination and charged a fee to the potential licensee, but it was costly for the Board to do so. Now the Board uses a national examination. The bill leaves it up to the Board to establish which examinations are appropriate. He pointed out that the bill eliminates the administrative fee since the Board no longer conducts the examination.

As explained by **Mr. Hales**, this bill allows the Board to charge a lower fee for an initial license than for a renewal. This was done because when licensees are first starting out they are less able to pay a large fee.

According to **Mr. Hales**, another revision in this legislation gives the Board additional authority for alternative disciplinary actions other than revocation or suspension of the license. These alternatives would involve education, training, and/or supervision. The bill adds consideration for failure to comply with a Board order. He explained that this change is based on a recent Idaho Supreme Court finding that if the Board has not been given the authority to discipline a failure to comply, then it cannot do so.

Mr. Hales explained that the bill was discussed at open meetings of the Board, was posted on the Board's website, and notices have been sent to the interested parties. There has been no opposition.

Senator Martin asked about language indicating that the Board acts as judge and jury in cases where the licensee is out of compliance.

Mr. Hales replied that the Board would still be obligated to take action under the Administrative Procedures Act to establish that violation. The licensee would still have full due process rights. This will give the Board recourse in cases where there are violations and the licensee does not comply with the Board order.

Senator Hagedorn stated that he didn't see any increase in fees and that the Board is currently \$155,000 in the red. He asked if there have been any discussions about how to become solvent.

Mr. Hales deferred Senator Hagedorn's question to Tana Cory.

Tana Cory stated that the deficit the Board faces is the result of some long-standing disciplinary issues. Last year, after those issues were resolved, the Board picked up about \$10,000 more than they spent, and this year they have picked up more. The Board will be coming to the Legislature next year regarding this issue.

Senator Lakey inquired if there is an occasion when the Board would issue an order that is not a disciplinary order.

Mr. Hales stated that he could not think of one.

Senator Bock pointed out a problematic phrase in an existing statute, i.e., moral turpitude. Due to the evolving perception of moral turpitude, it would be a phrase we should look at more carefully before using it in the future.

Mr. Hales responded that he understood the Senate's point. They will review the language.

Senator Schmidt said it looks like the Board is contracting out the examination and the fee goes straight to the person doing the exam. He asked if there is a relationship between the Board and the person doing the exam, fiduciary or otherwise.

Mr. Hales explained that a national organization developed the exam, and there is no relationship with the Board. The exact exam is specified in the rules.

Senator Nuxoll asked if there are different companies they can go to for the exam.

Mr. Hales stated that most of these national examination entities utilize exam companies. The exam is the American Podiatric Medical Licensing Examination (Exam) and there are a number of entities where the applicant can go to take the Exam. This allows for more flexibility for an individual applicant to take the Exam.

Senator Nuxoll asked what the cost was before and what it is now for a national exam. Also, she asked if there would be less expense if the Board kept to the state exam.

Mr. Hales replied that the Board has used the national exam for some time and it is about \$600. He stated that it costs about \$150,000 to prepare a national exam and to hire the right people to make it defensible in court. Because it is a national exam, once a person is licensed under it he/she can move anywhere in the United States and use the license.

MOTION:

Senator Guthrie moved to send **H 356** to the floor with a **do pass** recommendation. **Senator Schmidt** seconded the motion. The motion passed by a majority of **voice vote**. **Senator Nuxoll** was noted as voting no. Senator Guthrie will carry the bill on the floor.

Senator Nuxoll said she was still concerned about the vagueness of the "having to comply with an order issued by the Board". It needs to be more concrete, so I will be voting no on this bill.

H 438

Pertaining to Midwifery: Kris Ellis, Idaho Midwifery Council, asked for support of **H 438** which comes after working with the midwifery statute for five years. During that time the Board of Midwifery (Board) at the Bureau of Occupational Licenses and the Idaho Midwifery Council (Council) have been keeping a tally of things that needed to be clarified, as well as some things that needed to be relaxed, to make it easier for the midwives as well as for those using midwifery services. She stated that these groups, along with the Idaho Medical Association, have worked to clarify the statute and to ensure that midwives can serve their moms and babies in the best ways possible.

Ms. Ellis explained that this bill:

1. Adds definitions for "estimated due date" and "licensed health care provider";
2. Adds Cytotec to the formulary for the midwives and clarifying that the medications in the formulary are only for the mother;
3. Adds a provision allowing midwives to care for mothers of twins while they are being cared for by a medical doctor;
4. Clarifies dates for safe delivery by a midwife;
5. Allows other health care professionals to care for clients being seen by a midwife but who have other health care needs;
6. Allows a midwife to refer a client to a medical doctor in a boarding town out of Idaho;
7. Clarifies that midwives have not abandoned care when they terminate services and refer a client to a medical doctor or the nearest hospital;
8. Adds opiate use that places the infant at risk to the category where a midwife is not allowed to provide care;
9. Provides for a 10 year sunset when we will return to report on how the collaboration between midwives and the medical community improves and the resultant cost effective and safe option for those who choose it.

Senator Schmidt asked why the term Cytotec was used instead of misoprostol, and if that isn't an off label use of Cytotec.

Ms. Ellis deferred that question to a midwife who was present.

Paula Wiens stated that Cytotec and misoprostol are the same medication and the choice of name has to do with the formulary. One is the name used by the chemist who developed the drug and the other is more of the trade name. I don't know how much they vary; a pharmacist would have to help with that question. She added that in the medical community it is commonly known as Cytotec or misoprostol and both are found in medical records.

Senator Schmidt asked if Cytotec is the trade name and misoprostol is the generic name. He said that he did not understand why the generic name isn't used. If it is in statute, then you have to buy the Cytotec brand. He stated that he had a concern regarding the off label use of the drug.

Ms. Wiens stated that it is an off label use to control postpartum hemorrhage worldwide. She wasn't sure why it was still an off label use.

Senator Schmidt stated his concerns that this is a medical practice not approved by the FDA for this use but under this bill it is being put into statute.

Ms. Wiens replied that the Board of Pharmacy and the Idaho Medical Association were involved in this decision.

Senator Guthrie asked Ms. Ellis who makes the decision when to transfer unless imminent delivery is safer than transfer.

Ms. Ellis replied that it would be the midwife who makes that decision.

Senator Guthrie asked who made the decision in the past if this is language that was not there before.

Ms. Ellis responded that it was the midwife.

Senator Guthrie asked what prompted the decision to have it put into code if they were already doing that.

Ms. Ellis answered that everything that happens during the birthing process happens quite quickly, and often times you do not know there is a breach until you are in the process. The physicians commented that they assumed the midwife would do that anyway, so we put it in there just for clarification. Its inclusion is for clarification so if a midwife delivered a breach baby she would not be accused of being outside of the scope of practice when the delivery was the safer thing to do.

Ms. Ellis stated that she wished to go back and address Senator Schmidt's concern about the drug Cytotec. She pointed out that in the rules there is a whole chart on how the prescription drugs are to be allocated. In that list oxytocin is in the statute, but it also lists Pitocin in parenthesis so via the rule they had a mechanism to address your concerns.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 2).

TESTIMONY:

Pauls Wiens, a licensed midwife and a member of the State Board of Midwifery, came to speak in support of **H 438** wherein its few changes reflect improvements that have been agreed upon by all stakeholders. She stated that licensing of midwives has been beneficial for the profession and for midwifery consumers. The relationship between physicians and midwives has improved dramatically all over the State, a relationship that supports the safety of families choosing to have their babies outside of a hospital setting. **Ms. Wiens** requested that the Committee vote a do pass for **H 438**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 3).

Katharine Rawlins, a consumer of midwifery care and a representative of Idaho Midwives, supports **H 438**. Ms. Rawlins shared her experiences as a consumer of midwifery and as a student midwife about to become a Certified Professional Midwife. The details of her testimony can be found in attachment 4.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 4).

Senator Lodge commended Ms. Rawlins on sharing her story and in supporting other women who would like to have a midwife attend the birth of their children.

MOTION:

Senator Nuxoll moved that **H 438** be sent to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion passed unanimously by **voice vote**.

H 476

Relating to Medicaid revising provisions relating to home-based and community-based services for persons with developmental disabilities: Representative Luke Malek, explained that he is in support of this bill that establishes a way for Community Supportive Employment (CSE) services, a Medicaid service, to provide paid employment for persons for whom competitive employment at or above minimum wage is unlikely without supports. Most individuals with intellectual and developmental disabilities want to work in the community and this program allows them to get out in the community, to get off of some of the support systems, and allows them be a contributing part of the community. **Representative Malek** turned the time over to Jim Baugh.

Jim Baugh, Executive Director of Disability Rights Idaho (providing individual advocacy and legal services for Idahoans with disabilities, as well as commenting on public policy issues) explained the history of CSE and pointed out that during the 20th century people with developmental disabilities couldn't be employed in regular jobs at reasonable wages. Recently it has been shown that these people can be productive and valuable employees if they have specialized training and workplace supports. CSE services are intense one-to-one on the job training and workplace assistance that can create real employment opportunities. CSE is the only Medicaid funded service that promotes employment. **Mr. Baugh** gave detailed information regarding the following:

- Changes to Idaho Code from H 260 (2011) and **H 476**, dealing with home-based and community-based services which seriously limited the developmentally disabled in obtaining employment;
- Explanation of the fiscal impact of this bill;
- Real work opportunities for people who have no other way to have employment, and the benefits to them and to their employers.

Mr. Baugh concluded that the intent is to reverse an unintended effect from H 260 which was to restrict access to a Medicaid service that encourages and requires employment for the person to gain more independence.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 5).

TESTIMONY:

Tom Ball spoke in support of **H 476**, stating that the CSE services provide a way for the developmentally disabled to gain independent skills and build self-confidence. Being able to work also proves to themselves and to the public that they, too, are worthwhile individuals.

David Decker, President, Idaho Self Advocate Leadership Network (SALN), pointed out that although people with developmental disabilities can get CSE services, once their annual budget for services is set, it cannot be changed to add these employment services. Changes can only be made for health and safety reasons. **Mr. Decker** encouraged the passage of this bill which would allow a change in the reasons for budget revision to include "to obtain or maintain employment." He also pointed out that the Consortium of Idahoans with Disabilities has determined the fiscal impact to the State General Fund would not exceed \$235,000, and would likely be less.

Mr. Decker gave examples of individuals who had been offered work but had to turn it down because they could not revise their Medicaid budget to include job coaching. Another person had a chance for more hours and more responsibility, which would result in increased income, but had to turn it down because he could not get the added employment support necessary to learn the new job skills.

Mr. Decker stated that people with disabilities want to work. He pointed out that opportunities to work cannot be predicted, and employers often change the duties of their employees requiring new job skills. He emphasized that people with developmental disabilities should be able to obtain or maintain employment through CSE services when needed.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 6).

Kristen stated her support for this bill in hopes that those with developmental disabilities would be able to work.

Sarah Lloyd, owner of a service coordination agency, stated that their agency receives budgets in order to encompass everyone's services. She related her experience with a client who appeared to be able to be unsupervised overnight, as this was the way he could maintain his employment. During the unsupervised time there was a series of events that led to him being put on 24-hour support in lieu of job coaching. As a result, he lost his job leading to more assistance being required from various agencies. **Ms. Lloyd** stated that having a job helps people feel that they are a productive member of society and gives their lives purpose and meaning.

Tracy Warren, Idaho Council for Developmental Disabilities (a body of 23 volunteer members appointed by the Governor whose responsibility is to engage in activities to improve the quality of life for Idahoans with developmental disabilities) stated that they encourage people to exercise self determination, to be independent and productive, and to be integrated into all aspects of community life. Employment is a very important part of community life. **Ms. Warren** went on to say that CSE services are provided by job coaches and explained their functions. The time that is provided varies and Medicaid pays for the services, including the job coaches' wages. The individual with the disability is paid by the employer or business owner. **Ms. Warren** stated that **H 476** enables those with developmental disabilities to request a budget modification to obtain or maintain employment.

Cassie Mills, President of Vocational Services of Idaho (VSI) and Employment Director for Community Partnerships of Idaho (CPI) (a private agency which assists adults with disabilities with obtaining and maintaining employment) testified on behalf of VSI. **Ms. Mills** shared stories of people who have become contributing members of society after having job coaching services. She also mentioned some cases where, since the elimination of CSE services, people have lost jobs. **Ms. Mills** concluded by urging the Committee to pass **H 476**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 7).

Katherine Hansen felt most things had been covered, so she left written testimony and declined to speak (see attachment 8).

Representative Malek concluded the presentation of the bill by stating that the amount of money to be used more than makes up for what the State will get back in terms of the value both to society and to these individuals. He pointed out that the bill passed the House without any no votes.

MOTION: **Senator Martin** moved to send **H 476** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion passed unanimously by **voice vote**. Senator Martin will carry the bill to the floor.

ADJOURNMENT: **Senator Heider** adjourned the meeting at 4:19 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary

Carol Cornwall
Assistant Secretary