

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, March 03, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Patrick, Senators Cameron, Martin, Lakey, Heider, Lee, Schmidt and Ward-Engelking

ABSENT/ EXCUSED: Chairman Tippetts

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 Patrick** called the meeting to order at 1:30 p.m. and welcomed all.

MINUTES APPROVAL: **Senator Cameron** moved to approve the Minutes of February 17, 2015. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT AND HEARING: The appointment of Joy Fisher of Moscow, Idaho, to the Public Employee Retirement System of Idaho (PERSI), term commencing July 1, 2014 and expiring on July 1, 2019.

Ms. Fisher thanked the Commerce and Human Resources Committee (Committee) for their support and consideration. Currently she is the Director of Finance, University of Idaho Foundation. She said she appreciates PERSI and takes her responsibility as a PERSI Board (Board) member very seriously.

Senator Schmidt thanked her for her service and said he was glad she was being considered for reappointment. He asked her to address the statutory requirements for her appointment to the Board. **Ms. Fisher** said there were 2 requirements, namely, she has been with the University of Idaho for 30 years and a member of PERSI for the same amount of time.

GUBERNATORIAL APPOINTMENT: **Senator Schmidt** moved to send the gubernatorial appointment of Joy Fisher to the PERSI Board to the floor with the recommendation that she be confirmed by the Senate. **Senator Cameron** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the appointment on the floor.

S 1075: **Relating to Correctional Industries.** **Senator Hill** said this legislation clarifies that Idaho inmates working for private agricultural employers under contract with Idaho Correctional Industries are not entitled to workers' compensation or unemployment compensation. This has been the understanding and practice under such contracts, and this change is intended to remove ambiguity in the current statute. Because this legislation clarifies the practice and intention of Idaho Correctional Industries, there is no significant fiscal impact to the State.

Senator Hill said that each prisoner who is engaged in productive work may receive compensation for his work as the Department of Corrections Board (Board) shall determine, to be paid out of any funds available in the Correctional Industries Betterment Account. Such compensation, if any, shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance. Compensation shall be credited to the account of the prisoner and paid from the Correctional Industries

Betterment Account.

Nothing in this section or in this act is intended to restore, in whole or in part, the civil rights of any inmate. No inmate who is compensated under this act shall be considered to be an employee of or employed by the State, the Board, or any private agricultural employer that is a party to a contract for inmate labor pursuant to Idaho Code § 20-413A. No inmate engaged in productive work as authorized by this chapter shall be entitled to workers' compensation under Idaho Code Chapter 4 or Chapter 13, Title 72, whether on behalf of himself or any other person.

MOTION: **Senator Lakey** moved to send **S 1075** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

TESTIMONY: **Marty Durand**, representing the Idaho Building Trades Council (Council), spoke in opposition to the bill. She said the agricultural employer has no incentive to make the workplace safe or pay competitive wages. She said she objected to hiring inmates for low wages, which subsidizes the agricultural industry. **Vice Chairman Martin** and **Ms. Durand** had a conversation about the idea that an employer who covers an employee under workers' compensation cannot be sued.

Senator Cameron and **Ms. Durand** talked about the position of the Council relating to the training of employees and inmates. **Ms. Durand** said there are programs in prison to teach trades to inmates.

Andrea Sprengel, Services Manager for the Idaho Correctional Industries, spoke in favor of the bill. She said inmates are provided an opportunity to learn a trade. Inmates who participate in the agricultural work program or who learn a trade are less likely to re-offend. She said the agricultural work program is important to Correctional Industries and benefits the community in many ways. This program provides opportunities for inmates to learn marketable work skills, and make money that can be used to pay child support, pay restitution, and save money. This program provides private agricultural employers with a steady workforce when they have struggled to attract and retain non-inmate workers. The program also sends funds to the Department of Corrections to lower the cost of incarceration expenses, and contributes to the self-sustainability of Correctional Industries.

Ms. Sprengel reported a collaborative effort was made by the Industrial Commission, Idaho Correctional Industries, one of the potential private agricultural employers, and Senator Hill to put forth this bill to amend Idaho Code § 20-412 to provide clarification on how these provisions apply to the private agricultural employer in this recently created program. She said this bill does not change any policies but simply clarifies that inmates are not to be considered employees of the private agricultural employer when participating in this program.

Ms. Sprengel went on to say that the private agricultural employers have a civilian workforce along with inmate workers. The civilian workforce must still have workers' compensation coverage, which would motivate the private agricultural employer to have safety features in place. If injuries were to occur from the private agricultural employer's negligence, a claim would be made against their comprehensive general liability policy.

Correctional Industries must annually request a wage determination for wages that are similar in nature to the work that the inmates will be performing. Private

agricultural employers are required to pay the prevailing wage plus any other costs the employer avoids by using inmate workers, in an effort to make sure that no one is receiving a discount by using inmate labor. Private agricultural employers must certify in the contract they have been unable to attract and retain a sufficient number of non-inmate workers.

Ms. Sprengel said that to participate in the program, work must be done that is related to the processing of perishable food items and cannot include construction or logging.

Ms. Sprengel said there has been no objection to the bill.

Senator Schmidt and **Ms. Sprengel** discussed non-inmate workers being covered by workers' compensation and the approximate range of the cost for that coverage of \$4.50 to \$5.60 per \$100 of payroll.

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

S 1077:

Relating to Death Certificates. **Senator Schmidt** said the Association of Funeral Home Directors would like help. He said that currently in Idaho, if someone dies without directions for disposal of remains or with uncovered provisions in a prearranged funeral plan, Idaho Code § 39-270(b) does not acknowledge this person as having a "direct and tangible interest" for obtaining a death certificate. This amendment clarifies that the person with authority to designate disposition of remains should be considered a person with a "direct and tangible interest" and entitled to receive an official death certificate.

TESTIMONY:

Ken Mallea, representing the Association of Funeral Directors of Idaho, testified in support of this bill. He said Idaho Code § 54-1142 directs who has priority to make funeral arrangements and who has the right to receive a death certificate is not equal with who has authority in code. This bill allows persons who have authority to have the right to receive a death certificate from the Bureau of Vital Statistics. **Senator Cameron** and **Mr. Mallea** talked about when someone who dies who does not have a prearranged funeral plan. This bill corrects who is entitled to a death certificate.

John Buck, funeral director in Emmett, spoke in support of this bill. He said a clarification would help and he gave an example of a man whose common law wife passed away and due to the current law, he was not entitled to a death certificate.

MOTION:

Senator Cameron moved to send **S 1077** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor.

S 1062:

Relating to Direct Primary Care. **Senator Thayn** said this bill creates a simple format for Direct Medical Care agreements as a method for providing cost effective and personalized routine health care services on a contract, non-insurance basis. The bill provides basic definitions and contract requirements, describes applicable scope of practice, and exempts such agreements from regulation by the Department of Insurance (DOI). Services provided under such agreements can be recognized as "Direct Primary Care" under Section § 1301(3) of the Patient Protection and Affordable Care Act (PPACA) and constitute an allowable component of a qualified health care plan under the PPACA.

Senator Thayn said it is the policy of the State to promote personal responsibility for health care and the cost-effective delivery of medical services

by encouraging innovative use of direct patient-provider practices for primary and specialty medical care. Direct patient-provider practices utilize a model of periodic fees for provider access and medical management over time, rather than simply a fee for visit or procedure service model. Some patients and medical providers may wish to establish direct relationships with one another as an alternative to traditional fee-for-service care financed through health insurance. The purpose of this act is to confirm that direct patient-provider arrangements that satisfy the provisions of this chapter do not constitute insurance. He summarized the definitions and outlined direct care provisions. **Senator Thayn** said a medical provider cannot bill an insurer for the services provided under a direct care agreement; however, a patient may submit a request for reimbursement to an insurer if permitted under a policy of insurance. This limitation does not prohibit a direct medical care provider from billing insurance for services not provided under a direct care agreement. He pointed out that direct care agreements are not subject to regulation as insurance under Idaho Code, Title 41.

Senator Thayn said a direct care agreement must have the following disclaimer: "This agreement does not provide comprehensive health insurance coverage. It provides only the services described herein. It is recommended that insurance be obtained to cover medical services not provided for under this direct care agreement." He said a direct care agreement may not be sold or transferred by either party without the written consent of the other party to the agreement. A direct care agreement may not be sold to a group, employer or group of subscribers because it is an individual agreement between a medical provider and a patient. These limitations do not prohibit the presentation of marketing materials to groups of potential patients or their representatives.

Senator Thayn said direct primary care does work. The savings were approximately \$679 per person per year. He said direct primary care would encourage insurance companies to offer a wrap-around policy.

Senator Cameron said he had several questions. He disclosed for the record, under Rule 39 of the Senate, that he is an insurance agent and said he has a perspective that would be unique to some. **Senator Cameron** and **Senator Thayn** had a conversation about the issues being addressed in the bill.

Senator Thayn said the underlying issue was increasing the patient to doctor relationship in order to achieve a better primary care system. What this bill specifically addresses is regulatory uncertainty, even though the DOI has said they do not view direct primary care arrangements as insurance. They also talked about protection for the consumer if the contract was invalidated and protection for those who decide to enter into an agreement with the provider.

Senators Cameron and **Thayn** decided to discuss this question with the doctors who were going to testify later on in the meeting.

Senator Cameron asked Senator Thayn to explain how a direct primary care contract would improve access and reduce costs. He wanted to know what providers in other states are charging in a direct primary care arrangement.

Senator Thayn said that typically charges are \$60 to \$100, with less being charged for children. Direct primary care is designed to provide care for those who do not have insurance or for those who have chronic conditions and would benefit from increased enhancement of primary care. He gave an example of an enhanced primary care pilot program when chronically ill adults who ended up in emergency rooms who needed case management were studied.

The cost of the fee for service model for primary care is approximately 40 cents for every dollar in primary care spending, which are insurance company

costs. If a monthly fee is paid and insurance is not billed, the paperwork cost is reduced and the savings can be invested in a different way. Doctors can increase their income. Costs are reduced for patients who have an enhanced direct primary care relationship with their doctor.

Senator Lakey said in comparing last year's proposed bill there was a focus on routine health care services which is not part of this proposed bill and wanted to know why there was a change. **Representative Luker** said that in keeping with a free market model, options were not limited to certain categories. He stated there were certain practices, such as some sort of specialty, where this may not apply. He said options should be left open for physicians and the services provided in this model.

Senator Martin wanted to know if there were any Idaho physicians who are performing this type of service now. **Representative Luker** said there are approximately seven to ten physicians and the ranks are growing. **Senator Martin** wanted to know if there were other states that have done this, how long ago, what the effect is as far as numbers and the available cost of service. **Representative Luker** said the State of Washington was a good example where the insurance industry has responded to create wrap-around policies for needed coverage. **Senator Schmidt** wanted to know why there was a market response to a change in the State of Washington where the insurance companies decided to offer products that they previously were not offering. **Representative Luker** said he thought the insurance companies saw an opportunity to provide a product and they responded. The purpose of this bill is to plant the seed and to provide opportunities for Idaho citizens. There are a number of entities between the patient and the provider. **Senator Schmidt** wanted to know how broad the definition was of medical provider. He gave examples of a hospital, multi-specialty clinic and a statewide health care network and wanted to know if they were considered medical providers in this bill. **Representative Luker** answered the definition was intended for anyone who was licensed or otherwise authorized to provide health care services.

TESTIMONY:

Ken McClure, attorney, Idaho Medical Association, testified in support of the bill. He said many physicians and patients have become frustrated with red tape in the health care system. This bill allows physicians and patients to enter into agreements in the free market to do something that is different. He said this legislation takes the insurance company out of the equation. The DOI stated that these kinds of agreements were not viewed as insurance. This bill gives more certainty to physicians and patients. Doctors have to meet the requirements of the insurance companies which is frustrating. In order for a physician to practice medicine with the current reimbursement model, the physician has to fit the care of the patient into a Current Procedural Terminology (CPT) code. The doctor must have sufficient documentation to justify the code and be able to defend the code to the insurance company.

Senator Cameron asked conceptually how a direct primary care agreement would work. He gave an example of a patient who went to a primary care physician, agreed to pay a monthly amount, and wanted to know what services the patient would receive for the monthly fee. **Mr. McClure** said the physician can offer a contract to a patient and the patient can agree to that contract. The services the patient will receive will be provided by the physician under the contract for a fee that the two parties agreed upon. The scope of services must be provided by the doctor to the patient. **Senator Cameron** asked how a provider who has agreements with other customers might be impacted with respect to price. **Mr. McClure** said this was a free market choice between the doctor and the patient. **Senator Cameron** wanted to know how the passage

of this bill affected multiple contracts with insurance companies, hospitals, and networks. **Mr. McClure** said most physicians who want to offer these kinds of agreement to their patients will transition their practice rather than use insurance. There is no reason why part of the practice could not be done one way and part another. By unlinking the practice of medicine from insurance, physicians will benefit. He gave an example of how he charges his clients, such as an agreed upon fee which can be paid monthly, quarterly or annually. Sometimes he works on an hourly basis. A direct primary care agreement works the same way.

Senator Cameron wanted to know if someone who signed a contract with a direct primary care physician would they receive preferential treatment over someone else who has either traditional insurance or has no insurance. **Mr. McClure** said that was not the model seen very often. If the contract specifies the terms under which care will be given, the physician owes the patient the service that he has contracted to provide.

Senator Ward-Engelking asked if the term "medical provider" would include hospitals and special day clinics. **Mr. McClure** said yes. **Senator Ward-Engelking** wondered how each patient would negotiate their contract and if they would pay more or less. **Mr. McClure** said there was nothing in this legislation that either requires or prevents physicians and patients from making an agreement. Hospitals are included in the definition of medical provider. **Senator Ward-Engelking** and **Mr. McClure** had a conversation about the possibility of a hospital and clinic becoming a monopoly and how trade cannot be restricted due to anti-trust laws.

Senator Lakey and **Mr. McClure** discussed how scope does not matter and that a contract could be signed between a patient and a cardiologist, for example. **Senator Lakey** said that in this case, if there was a contract, the contract says it can be cancelled by the provider in accordance with the terms. Theoretically, someone could be in the middle of extensive treatment and the provider could use the termination clause when the patient is not finished with treatment and would have to go elsewhere. **Mr. McClure** said the statute says that a patient can terminate the contract at any time for no cause upon 30 days notice. A provider can only terminate for terms that are set forth in the agreement. The patient can also purchase regular insurance.

TESTIMONY:

Dr. Julie Kay Gunther, M.D., Spark Medical Doctors, said she was the owner of a true primary care practice and testified in support of this bill. She said primary care is a simple model of healthcare. She charges all of her patients the same rate. For those who are over 21, the rate is \$60 for anyone over the age of 100 the rate is \$1 a month; and for those under the age of 21 the rate is \$10 a month. Many items are either free or included in the rate. Laboratory tests are sold back to the patient at cost plus 10 percent, which saves patients over 80 percent. Her patients range from insured to uninsured and immigrants. This is an important solution for those physicians who practice direct primary care, which allows them to have a free market agreement with their patients to innovate. Several states have already passed this legislation and several others are considering passage of this kind of legislation. There were 800 doctors doing primary care in 2010 and now there are 4,400.

Senator Schmidt wanted to know if this bill did not pass, how would her practice change. **Dr. Gunther** said her practice would not change, but there is a lot of fear among physicians that the State will try to regulate their practice.

Senator Lakey and **Dr. Gunther** talked about how important it was to obtain wrap around insurance for unplanned events and catastrophes.

Senator Cameron and **Dr. Gunther** had a conversation about the direct medical care program and CPT codes for those patients who have wrap around coverage. **Dr. Gunther** said she did not bill insurance and does not provide anything for which insurance can be billed. **Senator Cameron** said the bill calls for the individual to be able to seek reimbursement, so how does the patient get reimbursed when there is no CPT code. **Dr. Gunther** said some physicians do provide CPT codes. She provides an invoice, which shows the monthly fee, but flex spending and health savings accounts will not reimburse.

Dr. Brian Crownover, independent physician, said he helps take care of Medicaid and Medicare patients, but also does direct primary care. Ideally he would go to all direct primary care. He talked about when a doctor may terminate the patient for costly unplanned events. He said termination does not apply, because the contracts for primary care doctors cover all of the things that could happen within the office. Anything outside of the office, the patient is responsible. He said obtaining health insurance as a wrap-around for expensive items is very important.

Dr. Crownover said without this bill, it will be less attractive for an insurer to come in and pay \$225,000 to the DOI for a single application to get a wrap-around policy approved in the State. He said the physicians want a stable environment in order to bring in wrap-arounds. He spoke about the importance of having insurance, which is needed for catastrophic, rare events, and he compared this to having car insurance. He said insurance should be reserved for big ticket items. He described buying a monthly retainer with a cell phone company, depending on the usage, the same amount is paid every month for access. **Dr. Crownover** then compared a cell phone contract to a primary care contract. He said primary care usage was not engaging in insurance. He said they were not doing a risk pool for payment but doing one-on-one contracts with individuals.

Senator Schmidt and **Dr. Crownover** discussed wrap-arounds coming to the State and how this legislation may help primary care doctors, larger groups or specialists and hospitals. They talked about growing the base which would bring the insurance product to Idaho. **Dr. Crownover** said direct primary care is most visible in the primary care setting and having the legal protection is very helpful. The rare, large dollar events are perfect for insurance, and that is not where the direct primary care model is coming from.

Due to lack of time, this bill was rescheduled.

ADJOURNED:

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

Senator Tippetts
Chair

Linda Kambeitz
Secretary