

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, February 16, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Agenbroad, Foreman, and Jordan

ABSENT/ EXCUSED: Senator Anthon

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 Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:01 p.m.

PAGE FAREWELL: **Chairman Heider** recognized and thanked Tia Youts for her excellent work as the Committee page for the first half of the First Session of the 64th Legislature. **Ms. Youts** thanked the Committee and said she learned a lot about herself and has grown as a person during her time at the Legislature. She plans to attend college in the fall and work toward a degree in pediatric nursing or elementary education. **Senator Souza** asked Ms. Youts the most surprising thing about working as a page at the Legislature. **Ms. Youts** answered she had been warned the Senators are grumpy, and she was pleasantly surprised to learn that was not entirely the case. **Senator Jordan** thanked Ms. Youts and commented she has been an outstanding page and has a bright future. **Chairman Heider** presented Ms. Youts with a gift from the Committee.

PAGE WELCOME: **Chairman Heider** welcomed Bridger Cardon who will serve as the Committee page for the second half of the 2017 Legislative Session. **Chairman Heider** asked Mr. Cardon to tell the Committee about himself. **Mr. Cardon** informed the Committee he is from Idaho Falls and attends a small high school of six students. He has been able to participate in several overseas trips as part of his studies.

GUBERNATORIAL APPOINTMENT: **Consideration of the Gubernatorial Reappointment of Janet Penfold to the Board of Health and Welfare.** **Chairman Heider** introduced Janet Penfold and asked her to tell the Committee about herself and why she would like to be reappointed to the Board of Health and Welfare (Board). **Ms. Penfold** stated she has appreciated serving on the Board for the last 19 years and has learned a lot. She hopes to be able to say she has served on the Board longer than her mother, Frances Field, served in the Legislature.

Senator Martin asked Ms. Penfold about a specific accomplishment during her time on the Board. **Ms. Penfold** answered she has not accomplished anything individually, but collectively the Board has accomplished quite a bit. When she was first appointed, the Department of Environmental Quality Board was part of the Board. **Ms. Penfold** said she chose to stay on the Board when the Department of Environmental Quality Board was separated because of her interest in health and welfare issues. She has served under three Governors and three Directors, and the caliber of staff serving at the Department of Health and Welfare (Department) is phenomenal. **Ms. Penfold** stated she is impressed by the people for their desire to want to help people and make a difference.

Senator Harris asked Ms. Penfold what is one of the biggest issues coming before the Board. **Ms. Penfold** said there is a lot of waiting to see what happens with the federal government and how it will trickle down to the states. One of the biggest issues the Board discusses is funding for all the Department's programs and services. She feels the State is doing good work and is interested in improving people's lives.

Chairman Heider advised Ms. Penfold the Committee will vote on the reappointment at the following meeting.

**GUBERNATORIAL
APPOINTMENT:**

Consideration of the Gubernatorial Reappointment of Tom Stroschein to the Board of Health and Welfare. **Chairman Heider** introduced Tom Stroschein and asked him to tell the Committee about himself and why he would like to be reappointed to the Board.

Mr. Stroschein advised he grew up in Aberdeen and attended University of Idaho. He spent 25 years as a sheep herder with 5,000 head of sheep. During the economic downturn in the 1980s, he went to work for Senator Stallings in Washington, DC and worked on agriculture issues. His wife, Ruby, is an appraiser and they have four grandchildren. He is a retired county commissioner and involved in Recovery Idaho.

Senator Martin asked what he and the Board have been able to accomplish, and what the future entails. **Mr. Stroschein** said he has learned quite a bit from Ms. Penfold. He was confirmed for his first appointment to the Board the same year Director Armstrong was confirmed, and it is a privilege to work with Director Armstrong. **Mr. Stroschein** said he is encouraged there is progress on addressing behavioral health and addiction problems. One reason he wants to be reappointed is to continue working on recovery issues.

Chairman Heider advised Mr. Stroschein the Committee will vote on the reappointment at the following meeting.

PRESENTATION:

Idaho Caregiver Action Plan. **Dr. Sarah Toevs** introduced herself to the Committee on behalf of the Idaho Caregiver Alliance (Alliance) and mentioned she is also from Aberdeen. **Dr. Toevs** stated representatives from the Idaho Commission on Aging and the Idaho Chapter of the American Association of Retired Persons (AARP) are present, as well as caregiver members of the Alliance. (See Attachments 1, 2, and 3 for copies of presentation and handouts.)

Dr. Toevs advised the Alliance includes anyone providing unpaid care for a family member or loved one. The mission of the Alliance is to be the voice of family caregivers, and it has over 350 members, including organizations and individual caregivers. The Alliance's funding to date has come from a \$200,000 grant from the Administration on Community Living, which will end in August 2017.

Dr. Toevs commented the Alliance approached the Legislature in 2015 for a concurrent resolution for Idaho to recognize the value of family caregivers and to create a task force to develop a caregiver plan. The Alliance held caregiver summits in Lewiston and Idaho Falls and completed a statewide needs assessment, looking at specific issues such as respite care and behavioral crisis. This year the Alliance is ready to share its action plan.

Dr. Toevs informed the Committee there are more than 300,000 family caregivers in Idaho, providing more than 200 million hours of unpaid care each year. Seventy percent of family caregivers work full or part-time. In 2010, there were six working adults for every retiree, and in 2020 the ratio is projected to be three working adults for every retiree. **Dr. Toevs** reported Idaho is 42nd in the U.S. in providing support for family caregivers and 49th in the U.S. for reporting levels of caregiver stress, worry, and exhaustion. **Dr. Toevs** said caregivers provide increasingly complex medical and psychological care to maintain people in their homes and delay the need for costly institutional care. Forty-eight percent of Idaho's Medicaid budget allocated to long-term care services is spent on institutional care. There is evidence family caregivers reduce readmissions to hospitals and reduce emergency room use, and they enable families and the care recipient to thrive.

Dr. Toevs presented the Alliance's action plan of four goals and ten objectives. The most pressing need is for respite care to give caregivers a break from their duties. Caregivers also need culturally appropriate and local resources, training, and a network of navigators for times of crisis. Respite resources are included on the map provided in the report. While it appears from the map there are many respite providers in Owyhee County, the accuracy of the data is doubtful. There are currently no standards for respite care workers, nor a registry of providers, and there is no central tracking information for respite requests.

Dr. Toevs reported the Alliance has worked to improve caregiver training. Using grant funds, the Alliance arranged for the Powerful Tools for Caregiver (PTC) program to be available in all regions of the State. The PTC program is evidence based and helps build caregiver resiliency, improve communication and time management skills, and assist caregivers' ability to function more effectively. **Dr. Toevs** stated other organizations are starting to expand training opportunities.

Dr. Toevs mentioned the Alliance provided resources to add a new caregiver and respite support button to the Idaho 2-1-1 Careline, and the Alliance will help maintain that option with the Careline. The Alliance has worked to raise awareness about family caregivers, allowing caregivers to be included on boards of other State programs and a wide variety of private organizations. The Alliance believes tax incentives and tax policies could be enhanced to improve support for caregivers.

Dr. Toevs stated the Alliance's next goal is to identify an ongoing funding source to continue its important work, ideally through a public-private partnership. Having resources to ensure data can be collected and report back whether what the Alliance is doing is making a difference. The Alliance is looking for a sponsoring agency with a statewide reach and the ability to coordinate various programs, and it will require people, money, and infrastructure.

Senator Lee inquired if there are states with good support systems for caregivers that could be used as a model for Idaho. **Dr. Toevs** answered Utah and Nevada have strong and innovative caregiver supports. The primary need expressed by caregivers is for respite support. Suggestions for improving local respite support have included using off-duty National Guard members and Medical Corps Reserve members as part of a community respite team.

Vice Chairman Souza asked if the Alliance has connected with any faith-based groups to build a public-private partnership. **Dr. Toevs** replied the faith-based community is extremely important and a good resource for trusted volunteers. The Alliance also considers health care providers as important to achieving outcomes, along with groups such as AARP Idaho and Idaho Parents Unlimited. Providing an infrastructure for these entities to come together is critical to sustain the work begun by the Alliance.

HCR 3

Relating to Family Caregivers. Representative Christy Perry introduced herself to the Committee to present **HCR 3** as a follow-up to the Alliance's presentation. The concurrent resolution highlights the services provided to Idaho citizens in their homes by family and friends without monetary compensation from the State of Idaho. This approach is consistent with Idaho's values of independence, self-sufficiency, and caring.

Representative Perry commented that caregivers provide approximately 201 million hours of uncompensated care annually, and Idaho's health care system depends on at-home caregivers to care for nearly 100,000 Idahoans of all ages. The cost of this care is estimated at \$2.1 billion annually. **HCR 3** draws attention to the number of Idahoans in need of care, the complex changes facing uncompensated caregivers, and the cost savings to Idaho because of their efforts to keep citizens out of institutions for as long as possible. The resolution also recognizes the initiative that was taken to understand and address the growing concerns surrounding the increasing demands and medical complexity of cases placed upon caregivers.

Representative Perry stated the resolution asks the Idaho Legislature to support the Idaho Lifespan Family Caregiver Action Plan and its recommendations, including to: 1.) increase public awareness for family caregiving and its burdens and benefits to the families; 2.) provide training to caregivers who are increasingly tasked with managing difficult medical and psychological conditions; 3.) improve caregiver support, including respite care resources; and 4.) integrate family caregivers into health care system discussions and transformations.

MOTION:

Vice Chairman Souza moved to send **HCR 3** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

H 8

Relating to Massage Therapists. Mitch Toryanski, Legal Counsel for the Idaho Bureau of Occupational Licenses (Bureau), introduced himself on behalf of the Board of Massage Therapists (BMT). **Mr. Toryanski** explained **H 8** adds a criminal-based background check as a licensing requirement for massage therapists for both new applicants and existing licensees. S 1259 (2012) provided for State licensing of massage therapists. Prior to that time, some cities regulated massage therapists, and some local ordinances required a fingerprint-based criminal background check for massage therapists. The massage therapist licensing legislation did not include that requirement, but after having worked with the public for the last five years, the BMT concluded it would be in the interest of public safety to require a background check.

Mr. Toryanski said the bill does not change the information an applicant must give the BMT nor does it change the criteria by which the BMT decides whether or not to issue a license. The requirement increases the likelihood that the criminal history information the Board considers is complete and correct, because the information supplied by the applicant would be verified. There is no fiscal impact to the General Fund, but the Bureau would need additional spending authority to pass through the \$37 one-time fee from the license applicants to the Idaho State Police.

Senator Foreman asked whether the current procedure involves fingerprinting. **Mr. Toryanski** answered the only information obtained by the BMT is what the applicant provides. There are no disqualifiers in the law but certain convictions must be reported, such as narcotics convictions, felonies, and crimes of moral turpitude. An applicant with something to hide has an incentive not to report it. **Senator Foreman** suggested the BMT consider obtaining background checks without fingerprinting and asked if the BMT is having problems with either new applicants or existing licensees. **Mr. Toryanski** replied the BMT currently has no way to get information on subsequent crimes after an applicant has been licensed. As for problems encountered by the BMT, there will be testimony later regarding at least one situation involving a massage therapist.

Senator Martin asked for clarification about the \$37 background check charge. **Mr. Toryanski** answered it is a one-time \$37 pass-through charge.

Senator Harris inquired how long a background check takes and the length of time fingerprints would add to the licensing process. **Mr. Toryanski** responded the BMT intends to invest in a fingerprint scanner to shorten the time for obtaining background check results from four to six weeks to two to three days.

Vice Chairman Souza stated she is uncomfortable with the bill because it comes across as an invasion of privacy. She asked why a simple background check would not accomplish the same result and why fingerprinting is necessary if there have not been many problems or if it doesn't change the criteria on which the BMT would decide an application. **Mr. Toryanski** answered he would like to have others provide testimony to assist with responding to these concerns.

TESTIMONY:

Mark Estess of Eiguren & Ellis introduced himself to the Committee as the Executive Director of the Idaho Chiefs of Police Association. The 2012 legislation preempted the various city ordinances and precluded the cities from conducting this type of background check. It is difficult to give details of past and current cases due to confidentiality issues but some involve human trafficking. The chiefs of police reviewed **H 8** and asked Mr. Estes to convey to the Committee their strong support of the bill.

Vice Chairman Souza asked for further information on how the bill relates to sex trafficking. **Mr. Estess** replied there is no way to get information about people coming into the area to obtain massage therapy licenses and some are brought in by others. **Vice Chairman Souza** stated she does not understand the connection between sex trafficking and fingerprinting massage therapists who may have been practicing for years without any problems. **Mr. Estess** answered he is not the expert in this area. He would be happy to obtain more information for the Committee to better address Vice Chairman Souza's concerns.

Chairman Heider commented he does not believe fingerprints are invasive but rather merely help law enforcement identify people who might be arrested. It is a very standard and normal procedure. **Vice Chairman Souza** responded she has heard from some constituents who are unhappy about the proposed legislation because they see it as invasive.

Senator Foreman said he agrees with Vice Chairman Souza. The motivation is undoubtedly altruistic but he thinks it is unnecessary, most people don't like it, and it's expensive.

TESTIMONY:

Becky Olinger introduced herself to the Committee on behalf of the Idaho State Chapter for the American Massage Therapy Association. The national and state associations strongly support **H 8**. The industry wants to ensure legitimacy of its profession, and this bill is one way to distinguish the profession from another with a similar name that does not have a good reputation. It is possible to purchase a fake identification card and fake diploma from the internet for \$1,200 in order to obtain a massage therapy license.

Ms. Olinger informed the Committee that massage therapists work in a wide range of venues, from clinics to doctor's offices to in-home studios and even clients' homes. The clients are potentially very vulnerable because the work is "hands on," sometimes clients are only partially clothed, and clients lie on a table with the therapist standing over them. It is sensitive health care work, and she often receives referrals from chiropractors and doctors. Those professionals are shocked there is no background check requirement for massage therapists, and patients assume the therapist has been checked out.

Ms. Olinger commented the massage therapy license application requires a therapist to self report any convictions and disclose any improper behavior on the part of another massage therapist. Most clients do not know about the Idaho Repository, nor does the Repository cover events happening outside the State of Idaho.

Senator Jordan asked if all massage therapy clients are adults, or if some are children. **Ms. Olinger** replied some of her patients are minors, and there is a requirement that a parent be in the room. **Senator Jordan** further inquired what would prevent a massage therapist from failing to tell the parent about that requirement and being in the room alone with the child. **Ms. Olinger** responded it is part of the license law and their job to inform the parent of the requirement. Some parents are surprised to hear about the requirement, and some are willing to drop off their children and pick them up afterwards.

Senator Lee expressed concern about the rule requiring current massage therapists to have a new requirement. She asked for clarification on how the BMT would apply such a broad requirement to existing practitioners and what the BMT approach to discipline would be. **Ms. Olinger** commented she is unsure whether the BMT has the ability to look at the Repository as part of its process. She is the President of the industry association and cannot address what the BMT might do as far as discipline. As far as doing background checks on current therapists, the legislation has been in place for five years, and she is sure there are some licensees who have an inappropriate background, but she can't prove it.

Senator Lee said she is concerned about unlicensed people performing massage therapy, but she doesn't understand how the background check would solve that problem. Her concern is that the law might be intrusive to those who are law abiding and result in the BMT collecting personal data on licensees.

Ms. Olinger responded there are 500 members in the state association, and she has not heard from anyone opposed to this legislation. The \$37 cost of a background check is a cost of doing business.

Senator Agenbroad said he has heard good arguments on both side of this issue, and he asked if there is any record of identity theft or unauthorized access to personal information by a massage therapist. **Ms. Olinger** answered she has not heard of any situations involving that type of activity. **Senator Agenbroad** further inquired about the opinions of the licensees who are not members of Ms. Olinger's association. **Ms. Olinger** replied she has only heard from the members of her association. There is another national professional association, but she has not spoken with that group and does not know whether they have received any comment on the bill. **Ms. Olinger** added 29 states currently require a background check as part of the licensing process.

TESTIMONY:

Steve Yerger introduced himself to the Committee and stated he became involved in this issue after his wife was assaulted by a massage therapist last year. He learned at that time the licensees do not have to undergo a criminal background check. His wife assumed the licensees had been checked out. **Mr. Yerger** said he talked to 25 people after the incident with his wife, and all of them said they assumed a criminal background check was part of the licensing process. He has been working with the BMT on this matter.

Mr. Yerger works primarily in Idaho and Oregon in armed and unarmed security and Special Investigations Unit work. He has helped corporations set up background check processes in accordance with the law. A simple background check is not always accurate because people can change their name, date of birth, and social security number. He has encountered this many times in his experience. **Mr. Yerger** uses the same database that law enforcement uses to conduct his background checks. If the person entering data into the system mistypes something, even one letter or number, the results of the background check will vary and may be inaccurate or incomplete. He must undergo a background check himself periodically for his work

Mr. Yerger reported the owner of the massage therapy clinic where his wife was assaulted tried to conduct due diligence on the assailant before employing him. The owner checked the Repository and found nothing. After the incident with his wife, **Mr. Yerger** was able to find information on the Repository that the assailant had two previous convictions for the same type of events, violated a no-contact order against one of the victims, and had an additional sealed criminal record. It is likely the clinic owner did not know how to search on the Repository. The best and most reliable background check is by fingerprinting because it is national and it is very difficult to change fingerprints.

Mr. Yerger commented Oregon just had a case where a massage therapist was convicted. When the police did a media release about the case, 10 more women came forward. It is difficult to come forward after a sexual assault. Based on his experience with investigations and background checks, it is safe to say there is more going on than the BMT knows about or than the public hears about. It was difficult for his wife to press charges and she even had a hard time telling Mr. Yerger about it because she blamed herself and felt helpless. The person who did this to his wife lied on his license disclosure and had been operating for some time. After the media release, two other women came forward who did not want to press charges, and subsequently the assailant was found to be operating with an invalid license. It is the government's job to protect people when they can't protect themselves, and regular citizens can't navigate the background check process on their own.

Mr. Yerger reported his wife's assailant spent five days in jail, and his license was revoked but he can reapply for a license after five years. He believes if this bill passes, a number of people will be found not to qualify for a license.

Vice Chairman Souza remarked she appreciates Mr. Yerger's testimony because he is a professional in a related field. She asked if there is a lower level of background check that could be conducted by an expert group and used for people already in the profession who have been successfully performing their work. **Mr. Yerger** replied there are background checks available on the internet for \$40 and the quality is not good. A company with the infrastructure and access to the proper database could provide that service. **Mr. Yerger** typically conducts two or three of the lower level background checks on the same person because the results often vary. He just did one check where the person had three different variations of their name. This approach can be more expensive and time consuming than taking fingerprints on a scanner.

Mr. Toryanski was recognized to conclude remarks on the bill. The Bureau serves other boards that require fingerprint background checks, including driving businesses, real estate appraisers, residential care administrators. The Board of Medicine, Board of Nursing, and Board of Pharmacy all require it. The majority of other states do require fingerprinting. People from other countries have been imported to various locations and apply for massage licenses. The people are not who they say they are, and their training and credentials are not as represented. The fingerprint-based background check assures the information received is for the correct individual. People are very surprised when they hear that massage therapists do not have to undergo a background check to be licensed. The BMT has received letters from massage therapists who are not in support of the legislation, but others are very supportive because their clients will have more confidence in them.

Senator Lee asked if there is anything to prohibit the BMT from comparing the information on the license application to the Repository and sanctioning people who have lied on their applications. **Mr. Toryanski** replied there are more than 2,000 licensed massage therapists, who all attest to their records. The BMT is comprised of five volunteers who process renewals, and they would have to hire an employee for that purpose. The legislation contemplates hiring a part-time employee to handle the initial fingerprinting process, but existing staff could handle the work load after the transition. **Mr. Toryanski** explained he has used a number of databases, and the Repository is very cumbersome. In addition, the State of Idaho is moving to a new electronic court system, and it is becoming even more difficult to obtain useful information.

MOTION:

Senator Martin moved to send **H 8** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion.

Senator Jordan said she intends to support the motion for several reasons. First, it is instructive that the professional association and the chiefs of police support it. There was a significant problem in Boise City with some people opening spas, but they were not performing actual massage therapy. That was the reason the fingerprint requirement was put into place, and many of the women were found to be working against their will. When the law changed, authority was preempted from the cities, but there was no corresponding transition of responsibility. This is a responsible approach.

SUBSTITUTE MOTION:

Senator Foreman made a substitute motion that **H 8** be held in Committee subject to the call of the Chair. The motion failed for lack of a second.

Vice Chairman Souza stated she will hesitantly support **H 8** and looks forward to receiving more information from Mr. Estes and Mr. Toryanski. There is enough validity to send the bill to the floor to allow the full Senate to vote on it.

Senator Lee commented she is having a hard time supporting the bill because it does not address the issue of people practicing without licenses. Some of the people Senator Jordan mentioned will not be caught because they don't have a license to start with. This bill might not strike the right balance and she is unsure whether she can support it on the floor.

Chairman Heider called for a roll call vote on the original motion. **Chairman Heider, Vice Chairman Souza, and Senators Martin, Lee, Harris, Agenbroad, and Jordan** voted aye. **Senator Foreman** voted nay. The motion carried.

H 9

Relating to Massage Therapists. Mr. Toryanski presented **H 9** on behalf of the BMT. The bill would increase the BMT member honorarium from \$50 to \$100 for attending a meeting. There are five members who meet six times per year on average. If every BMT member attends every meeting, the total honoraria per year would increase from \$1,500 to \$3,000, a maximum increase of \$1,500 to the Bureau's dedicated fund. There is no fiscal impact to the General Fund. BMT members receive no credit for State service and are not part of the Public Employee Retirement System of Idaho (PERSI). The honorarium is a stipend to partially offset the loss of income absorbed by BMT members for providing a day of State service. The meetings usually last all day and some BMT members travel to Boise from around the State. BMT members must review large amounts of documentation to prepare for each meeting, and there is no compensation for teleconference meetings.

Senator Agenbroad asked how the increase in the honorarium compares to other board honoraria. **Mr. Toryanski** answered the honoraria range from \$0 to \$100 per meeting. Of the boards served by the Bureau, seven receive no honorarium, 13 receive \$50, one receives \$75, one receives \$100, six receive \$35 and two receive \$25. Last year, the Board of Pharmacy successfully requested an increase for its board members from \$50 to \$100.

Senator Martin moved to send **H 8** to the floor with a do pass recommendation. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Heider** adjourned the meeting at 4:44 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary