

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Tuesday, March 07, 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 3:00 p.m.

**APPROVAL OF MINUTES:** **Senator Agenbroad** moved to approve the Minutes of the February 23, 2017 meeting. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**Vice Chairman Souza** moved to approve the Minutes of the February 27, 2017 meeting. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**Senator Lee** moved to approve the Minutes of the February 28, 2017 meeting. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**H 191**

**Relating to Pharmacy. Pam Eaton**, President and Chief Executive Officer (CEO) of the Idaho Retailers Association, introduced herself to the Committee on behalf of the Idaho Retail Pharmacy Council and the Idaho State Pharmacy Association. **Ms. Eaton** explained after two similar bills were presented earlier in the session relating to pharmacist dispensing of tobacco cessation medication and tuberculosis skin testing, legislators asked if there were other medications that would be appropriate for pharmacists to dispense without a prescription. **H 191** is the result and would make it as easier for Idaho consumers to access medications for low risk conditions.

**Ms. Eaton** commented Idaho has a successful track record of allowing direct consumer access to low risk prescriptive medications. Since 2011, the Legislature has approved bills to allow pharmacists to dispense immunizations, fluoride supplements, opioid antagonists, and epinephrine auto-injectors. Rather than continue a piecemeal approach through separate legislation, **H 191** would authorize the State Board of Pharmacy (BOP) to add to the list of allowed medications through open negotiated rulemaking for low risk conditions that could improve public health in Idaho.

**Ms. Eaton** stated the bill does not authorize any specific drug or product and would not give pharmacists discretion to prescribe any drug or product. Instead, the bill would give the BOP limited rulemaking authority to promulgate rules for specific drugs for conditions that do not require a new diagnosis, are minor and self limited, have a CLIA wave test that is used to guide decision making, or are used on a short-term emergency situation. The bill would also restrict the BOP from including any controlled substances, compounded drugs, or biological products. Any new rules promulgated by the BOP would be reviewed by the Legislature.

**Ms. Eaton** said the bill is needed because Idaho has a shortage of health care providers, especially for patients who are uninsured or underinsured. **Ms. Eaton** referred to a letter provided to the Committee from Aquinas College (see Attachment 1), stating that the U.S. is one of the few countries in the world that limits access to certain medications by requiring the patient to obtain a prescription from a health care provider, which can be an inefficient process. For example, someone wanting a motion sickness patch in anticipation of taking a cruise must schedule an appointment with a prescriber, wait for the appointment, take off work to attend the appointment, make a copayment for an office visit, obtain a prescription, and take the prescription to a pharmacy to be filled. Increasing access to medications such as these can result in increased competition and access, lowered costs, and improved quality.

**Ms. Eaton** informed the Committee travel medications will likely be a good starting point for the BOP. Looking at what other states allow, the list could also include medications for cold sores and lice. For example, a lice outbreak at her daughter's school was difficult to eradicate because over the counter treatments were ineffective and most parents did not obtain a prescription from a doctor for more effective lice shampoo.

**Ms. Eaton** mentioned the bill does not involve a radical change that will set Idaho apart from other states. Idaho's approach is slightly different because it allows changes to be made through rulemaking rather than by separate legislation, but Idaho has the tightest restrictions on rulemaking of any state in the country. The BOP has been recognized for its transparent and evidence-based decision making. She is confident the BOP will only do what is best for the patient and have concern for patient safety.

**Ms. Eaton** further commented this is not an expansion of the scope of practice. The practice of pharmacy is evolving, along with research and education, and pharmacists are trained more thoroughly to perform this type of work. She provided letters of support from the Idaho State University School of Pharmacy faculty and pharmacy students, the American Association of Retired Persons, the Idaho Society of Health System Pharmacists, and another economist (see Attachments 2, 3, 4, 5, and 6).

**Chairman Heider** said he has heard concerns that the bill would allow pharmacists without additional training to begin prescribing in every aspect of medicine, while previous legislation has involved one drug at a time. **Ms. Eaton** responded the bill spells out what can and cannot be prescribed and in what situations. Also, pharmacists would not be allowed to prescribe medications for off-label purposes, or in other words, for a purpose it was not originally intended for. **Chairman Heider** asked if "off-label" means a doctor prescribes one thing, and a pharmacist could give a comparable drug. **Ms. Eaton** replied that is "substitution."

**Vice Chairman Souza** referred to the smoking cessation legislation and mentioned the bill required special training for those specific products. She asked whether there would be additional training for any new medication that pharmacists could start prescribing, and whether there is any anticipated increase in liability for the pharmacists as a result of the increased authority. **Ms. Eaton** answered the BOP will determine on a case-by-case basis whether additional training is needed for patient safety, and it will be included at the time of rulemaking. No additional liability is anticipated for the pharmacists. Research was conducted with insurance companies who provide liability insurance, and in other states where pharmacists have prescriptive authority, insurance rates did not increase.

**TESTIMONY:** **Trent Galloway** introduced himself as a fourth year student pharmacist at Idaho State University where he is obtaining his doctorate in pharmacy. **Mr. Galloway** stated he and his fellow pharmacy students strongly support **H 191**, and they are ready, willing, and able to provide the services described in the bill. He and his fellow students see the bill as an important step in helping pharmacists be better utilized to their full ability in Idaho, and they were excited the bill passed the House unanimously.

**TESTIMONY:** **Laura Churns** introduced herself as a pharmacist and the Director of Pharmacy Legislative and Regulatory Affairs at Albertson's Companies (Albertson's) to speak in support of **H 191**. Albertson's is one of the largest food and drug retailers in the U.S. and operates in 35 states and the District of Columbia. In Idaho, Albertson's operates 41 stores with 38 in-store pharmacies. Including the corporate office, Albertson's employs more than 4,400 Idahoans.

**Dr. Churns** commented the scope of service contained in the bill may sound new for Idaho, but these are normal services Albertson's successfully provides in other states. For example, Albertson's pharmacies provide travel health services in 13 states, and the program is well received by the patients as a quick and convenient way for a patient to be screened and obtain travel medications at night or on weekends. Another service provided is rapid strep testing. **Dr. Churns** described a recent patient encounter in Washington where the patient was a teacher who came down with a sore throat on a Friday night. The teacher was scheduled to leave town the following morning to attend an event with her daughter. Upon presenting at an Albertson's pharmacy that evening at 8:00 p.m., the teacher was tested for strep. When the test came back positive, she was able to receive an antibiotic and begin treatment immediately at less cost than going to the doctor's office and without seeking emergency care.

**TESTIMONY:** **Susie Pouliot** introduced herself as the CEO of the Idaho Medical Association, the largest organization representing physicians in the State of Idaho, to speak in opposition to **H 191**. **Ms. Pouliot** stated if passed in its current form, the bill would be the most liberal independent prescribing law in the U.S. There are currently only two states that allow independent pharmacists to prescribe, California and Oregon, and there are additional parameters in those two states' laws that do not exist in **H 191**. California and Oregon laws include the drug classes allowed to be prescribed, and both states require consultation with their respective state medical boards and other entities to develop prescribing protocols, including protocols for patients under the age of 18. There are no such requirements in **H 191**, and the BOP would have discretion to decide how to use its broad new authority.

**Ms. Pouliot** commented the bill contains no specific guidance on the classes of drugs a pharmacist could prescribe. Such drugs could include travel medications, lice treatment, pink eye, or others, or even contraceptives. There is no specific direction from the Legislature on age limit or parental consent parameters for prescribing contraceptives as included in other state laws. The prescription of contraceptives will likely be a controversial policy issue that would be decided by rulemaking. While Idaho has a higher bar and all rules are ultimately approved by the Legislature, the rulemaking process does not afford the same level of public scrutiny, attention, or broad-based input as the legislative process.

**Ms. Pouliot** referred to **H 195** and **H 212** as examples of bills which outline in great detail the parameters for scope of practice, specific educational requirements, and specific drugs and types of patients the providers are allowed to treat. **H 191** is dramatically different from that approach because the bill contains none of those parameters and presents a question of whether the Legislature will cede its authority to the Executive branch to determine these policies. It also puts the BOP in the inappropriate position of acting as an advocate for the pharmacy profession rather than its proper role as a regulator of the profession to protect the public. Advocacy should remain solely in the realm of provider associations, not the regulatory boards, and **H 191** could change that.

**Senator Foreman** commented Ms. Pouliot brought up some good concerns, but the bill answers those concerns for him. The State is of necessity an advocate for everybody. The BOP would be allowed to write proposed regulations, and the necessary safety valve is legislative review. The bill would make health care more affordable and more available. **Senator Foreman** said **H 191** does not bother him, because all rules come back to the Legislature and the bill is not a blank check.

**Ms. Pouliot** thanked Senator Foreman for his perspective and responded she fully understands the rulemaking process. She pointed out this bill is distinctly different than the past approach where the Legislature sets the parameters in statute first and the regulatory boards follow along with rules. **H 191** reverses that approach to allow the BOP to set parameters in rule, albeit with legislative review.

**Senator Martin** mentioned if this authority is granted to the BOP, a certain amount of money will be transferred from physicians to pharmacists. He asked if the financial issue is a concern to Ms. Pouliot's members. **Ms. Pouliot** answered the financial issue has never come up with her members, because everyone is aware there is a shortage of physicians. There are some good arguments to be made for expanding access for patients to obtain health care in places other than a doctor's office. Her only concerns are with the way the bill is drafted because policy parameters are not strictly defined in the bill.

**Vice Chairman Souza** commented that sometimes during the rulemaking process the entire Committee room is packed with people, and the process is followed very closely. The Legislature takes rulemaking very seriously, and it is an important part of the Legislature's job especially with Idaho's new constitutional amendment.

**Ms. Pouliot** thanked Vice Chairman Souza and said she will try to comfort her members with that encouragement.

**TESTIMONY:**

**Francoise Cleveland** introduced herself on behalf of AARP Idaho and its 85,000 members to speak in support of **H 191**. **Ms. Cleveland** reported that according to the U.S. Census Bureau and Social Security Administration, one in three older Idahoans rely solely on Social Security for their income at an average of \$14,603 per year, with an estimated one of every six dollars spent on health care. Every opportunity to reduce costs for the senior population should be examined. Older Americans use prescription drugs more than any other segment of the U.S. population, typically on a chronic basis. For older adults, prescription drugs are critical to improve quality of life.

**Ms. Cleveland** stated AARP Idaho supports cost-reducing policies that increase access to quality health care. Providing alternate access for prescription medication saves both time and money for the patient as well as any caregiver involved. The pharmacists are one of the most successful health care providers in Idaho, and this bill will increase the availability of health care, especially in rural communities.

**TESTIMONY:** **Alex Adams** introduced himself as the Executive Director of the BOP. **Mr. Adams** advised the BOP approach to rulemaking is "what do we want - evidence-based change; when do we want it - after peer review." He feels the BOP has done a good job of sorting fact from fiction, as exemplified by the tobacco cessation bill. With that legislation, the BOP reviewed the peer-reviewed literature, talked to other states and jurisdictions that had implemented similar services, learned from other states' experiences, and brought a bill based on those experiences. Education, screening, referral, documentation, and notification requirements are all critical elements that will be considered in rulemaking for each drug, class of drug, or device that is authorized under **H 191** on an individual basis. It would not be possible to write "one size fits all" criteria in legislation.

**Pam Eaton** was recognized to summarize the bill presentation. Idaho has the most stringent rulemaking process in the country and is the only state where the Legislature looks at the rules and approves or does not oppose them. In other states, agencies can pass rules without oversight. **Ms. Eaton** informed the Committee she moved to Idaho from Washington, where she held a similar position on behalf of industry groups. In Washington, the only way to stop agencies from implementing overreaching rules with immediate effect was to file a lawsuit or ask the Legislature to pass a law to stop the rule after the fact. Idaho's rulemaking process is exceptional, and her counterparts in other states are jealous.

**MOTION:** **Senator Martin** moved to send **H 191** to the floor with a **do pass** recommendation. **Vice Chairman Souza** seconded the motion.

**DISCUSSION:** **Senator Lee** stated she appreciates the hard work that has gone into developing the legislation and intends to support the bill. She always considers how much discretion to give agencies and understands the concern. If this was an environment without scarce resources or no areas of limited access, she might look at it differently. The legislation can always be readdressed in future should the BOP take its discretion too far. She commends the BOP for its efforts to increase access in a measured, peer-reviewed, and data-driven way, and she looks forward to considering new proposals and constituency concerns in the future.

**Senator Jordan** said she too will support the bill because of Idaho's rulemaking process compared to other states without the same robust level of review. There are a number of people in the State who are uninsured or underinsured, and some have the additional burden of being underemployed. It is critically important for people to have access to basic health care, and if there are ways to facilitate that access through appropriate avenues, it is a win-win for everybody.

**Vice Chairman Souza** concurred with Senator Lee's comments about the close scrutiny of the Legislature and Senator Jordan's comments about improving access to health care. For people who don't have a lot of money and are struggling, health care premiums can be exorbitantly high and out-of-pocket expenses are particularly difficult. People often will forego having small things taken care of due to high deductibles or no insurance. This bill might help someone decide to stop smoking or purchase head lice shampoo or take a first step to stop an issue from progressing and becoming a expensive problem. She intends to support the bill.

The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:44 p.m.

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Senator Heider  
Chair

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Jeanne Jackson-Heim  
Secretary