

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 25, 2019

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Martin, Vice Chairman Souza, Senators Heider, Lee, Harris, Burtenshaw, Bayer, Jordan, and Nelson

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Martin** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:15 p.m.

MINUTES APPROVAL: **Senator Heider** moved to approve the Minutes of January 16th, 17th, 21st, and 22nd, 2019. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT VOTES: **Re-appointment of Kermit Kiebert to the Department of Environmental Quality.**

Senator Heider moved to send the Gubernatorial re-appointment of Kermit Kiebert to the Department of Environmental Quality to the floor with recommendation that he be confirmed by the Senate. **Senator Jordan** seconded the motion. The motion carried by **voice vote**. Senator Heider will sponsor the appointment on the floor.

Appointment of Mark Bowen to the Department of Environmental Quality.

Senator Jordan moved to send the Gubernatorial appointment of Mark Bowen to the Department of Environmental Quality to the floor with recommendation that he be confirmed by the Senate. **Senator Heider** seconded the motion. The motion carried by **voice vote**. Senator Jordan will sponsor the appointment on the floor.

S 1099 **Relating to Child Care Licensing ... To Provide for a Certain Waiver.**

Vice Chairman Souza advised that teenage drug and alcohol addiction and suicides are escalating in Idaho, and our teens need help. She stated that there is a lack of residential treatment programs for teens 13 through 17 years of age. **Vice Chairman Souza** stated that this is a complete re-write of the bill she originally introduced in the Committee, including a change of code section to Idaho Code § 39-1202. She indicated she has worked with the Governor's office, the Attorney General's office, and the Director and staff of the Department of Health and Welfare to come up with amending language that will work for everyone. This bill, with amendments, offers an exemption from licensing to private programs offering temporary alcohol-drug abuse treatment for teens. The programs will be limited to a period of up to four months. Teens must have a medical doctor's prescription for the program, and their parent or guardian must provide a signed consent form authorizing treatment. The facility must pass safety inspections, and all staff and volunteers must undergo background

checks. **Vice Chairman Souza** requested that the Committee send the bill to the 14th Order for amendment.

MOTION: **Senator Jordan** moved to send **S 1099** to the 14th Order of Business for possible amendment. **Senator Bayer** seconded the motion.

DISCUSSION: **Senator Heider** asked if the fiscal note would still apply after amendment. **Vice Chairman Souza** indicated it is her intention to update the fiscal note.

TESTIMONY: **Denisha Morgan** spoke in opposition to **S 1099**. She stated she is 13 years old, and related her positive experience in an out-of-state licensed treatment center for mental health issues. She expressed concern that Idaho's teens would not get the needed treatment and care in an unlicensed treatment facility.

Vanessa Morgan, Denisha's mother, stated she had objections to the bill as introduced, but most of those objections no longer apply with the proposed amendment. She indicated she still had concerns with the license waiver, but stated she would like to see this move forward, and the parties work with the treatment facilities to help them accomplish licensing.

DISCUSSION: **Senator Lee** thanked Ms. Morgan for her testimony, and assured her that her voice has been heard. She commented that she does not look at this bill as an either-or, but as an option for Idaho's teens.

Vice Chairman Souza emphasized that these temporary treatment centers are for children whose primary problem is drug and alcohol abuse; it is not a program for mental health treatment. She added that the Governor's office is reviewing the requirements for licensing these treatment centers.

VOICE VOTE: The motion to send **S 1099** to the 14th Order of Business for possible amendment carried by **voice vote**.

S 1034 **Relating to Health Insurance ... Provisions Regarding Anticancer Medications.**

Senator Lori Den Hartog, District 22, stated the intent of this legislation is to create co-insurance parity for cancer treatment patient cost regardless of whether treatment is received through IV therapy or taken orally. She advised that currently, if the cost of IV treatment is \$10,000, the patient's cost after deductible is between \$2,000 and \$3,000; and if treatment is taken orally at a cost of \$10,000, the patient's cost after deductible is between \$4,000 and 5,000. **Senator Den Hartog** stated cancer treatment is cancer treatment regardless of form. She commented that Idaho families are grateful that Idaho's private health care insurers cover cancer treatment in some manner; but the cost to the patient should be the same percent of co-insurance whether medication is administered intravenously or taken orally. She advised that 43 other states have passed similar legislation and it is time Idaho did the same.

TESTIMONY: **Thea Zajac**, Director of Government Affairs, The Leukemia & Lymphoma Society, spoke in support of **S 1034**. She reviewed some of the advances in cancer treatment, and how oral medications are treated differently than IV treatment by insurance plans. She indicated that this bill ensures that cost sharing for FDA approved prescription drug treatment is not more than cost sharing for FDA approved IV treatment. She emphasized that under this bill insurers cannot raise the IV treatment cost sharing to the level of the prescription drug cost sharing. **Ms. Zajac** stated that the Leukemia & Lymphoma Society wants to create equity between these two types of cancer treatments to ensure no patient ends up paying significantly more simply because of the type of cancer they have, and that no patient goes without treatment that can save their life.

Jim Morrison, of Post Falls, spoke in support of **S 1034**. He stated he is a 15-year, Stage 4 lung cancer survivor because of a pill called Tarceva, an oral chemotherapy treatment. He indicated a prescription for a month's supply of 30 pills cost him \$6,000, and he took Tarceva for 10 years. Because his deductible was high, each year he paid the first \$6,000 and after that his cost was \$400 per month. He has been off the medication for two years, and is active as a mentor in community cancer support groups.

Charles Seip, also a cancer survivor since a 2001 diagnosis of chronic myeloid leukemia, spoke in support of **S 1034**. He stated his cancer was controlled for 15 years while he took the oral medication Gleevec. His body then developed an intolerance to the drug, and his leukemia came back. He then began taking Sprycel, an oral medication that worked well for him, with tests showing no trace of leukemia. He was able to get assistance with co-pays from the manufacturer of Sprycel for one year and five months, then the manufacturer stopped the co-pay assistance, and his insurance refused to pay for the medication. He was without any medication for a very anxious period of five months while the manufacturer and insurance company tried to negotiate responsibility for payment. The result was a denial of any coverage for Sprycel. Fortunately, his doctor found another drug, Tasigna, which he takes today, but it is causing side effects. He stated that he pays a high premium for insurance, but coverage for medication that could keep him cancer free is being denied.

DISCUSSION: **Senator Jordan** asked Mr. Seip if he incurs additional expense for treatment of the side effects caused by his current medication. **Mr. Seip** responded that he does have extra medical expenses to deal with the side effects.

TESTIMONY: **Dan Zuckerman, MD.**, Medical Director, St. Luke's Mountain States Tumor Institute, a practicing Oncologist, and President of the Idaho Society of Clinical Oncology, spoke in support of **S 1034**. He stated he represents his fellow colleagues, and would like to think he represents the patients he and his colleagues take care of. He indicated support for this bill that imparts equity in how cancer care is covered, whether it is IV treatment or oral treatment. He indicated that doctors are sometimes forced to make difficult and often suboptimal decisions for patients because IV chemotherapy is covered differently than oral chemotherapy. **Dr. Zuckerman** shared the history of a patient with chronic myeloid leukemia, the same disease as Mr. Seip, that should be easily controlled with oral medication. Because of the inequity of how oral chemotherapy is covered, the patient was only able to take the oral medication intermittently for the last five years. She now has acute leukemia, a disease that is not going to be cured. **Dr. Zuckerman** emphasized that nothing in **S 1034** mandates what type of cancer therapy a plan covers, it just says for what they have decided to cover, there should be some equity and fairness in terms of the coverage and the cost distribution to patients for IV treatment versus oral treatment.

DISCUSSION: **Vice Chairman Souza** asked if IV chemotherapy agents are generally more toxic than oral chemotherapy. **Dr. Zuckerman** responded that it really depends upon the type of cancer. He indicated we are in an era now where we are able to subset and tailor therapies depending on the specific type of cancer. He used breast cancer as an example, stating that perhaps 20 percent of breast cancers are HER 2 positive and they are treated most effectively with tolerable IV therapies. However, about 60 percent of breast cancers are hormone sensitive and oral treatment is clearly the most optimal and least toxic. **Vice Chairman Souza** inquired if the oral chemotherapy pill is best for a breast cancer patient, is Dr. Zuckerman's treatment decision based on the cost of the oral chemotherapy or is it that the particular insurance company does not cover

that type of chemotherapy. **Dr. Zuckerman** advised that all insurance carriers cover the new oral therapies, but the costs are not the same.

TESTIMONY:

Luke Cavener, Director of Government Affairs, American Cancer Society Cancer Action Network (ACSCAN), spoke in support of **S 1034**, saying it will modernize Idaho's laws to keep up with the latest research in cancer treatment options by helping to equalize the out-of-pocket costs for oral chemotherapy and IV chemotherapy. He stated that today there are many types of chemotherapy that can be taken as a pill or a liquid, and it is an exciting time to work in cancer advocacy. As research and technology in the fight against cancer continue to evolve, some health care benefit plans have not yet adapted, which has impacted patient access. When chemotherapy is prescribed as an oral medication it is dispensed at a pharmacy and covered under the plan's prescription drug benefit with the patient's co-pay being 40 to 50 percent. Traditional IV chemotherapy is generally covered under the medical plan with a lower cost share of 20 to 30 percent. As a result, cancer patients face higher out-of-pocket costs simply because their chemotherapy is dispensed orally as opposed to intravenously. These high costs impact patients' decisions. **Mr. Cavener** indicated that in a recent study, 84 percent of oncologists said their patients' out-of-pocket spending directly influences their treatment recommendations. He stated that **S 1034** addresses this problem and allows patients and their oncologists to decide on a course of treatment that is based on what is best for the patient rather than on out-of-pocket costs. He concluded that oral therapies are not only increasing survivorship, they are also improving patients' quality of life. Traditional IV therapy may require a caregiver, patients often miss work for treatment, and need transportation to and from appointments; oral medication can be taken in the comfort of the patient's home, usually on a daily basis. Updating Idaho's laws so cancer patients have better access to the advances in cancer care makes sense.

Steve Thomas, attorney, testified on behalf of the Idaho Association of Health Plans (IAHP), a state trade association comprised of many of the health insurers doing business in Idaho. He stated the individual members of IAHP have a great deal of respect for this Committee and certainly for all of their members who face this horrible disease. Speaking in opposition to **S 1034**, he stated IAHP's concerns with this legislation. He indicated that IAHP looks at **S 1034** as a government mandate telling them how they are to do business. He stated the real issue here is the high cost of drugs, and further indicated that **S 1034** is not really a chemo parity bill, it is a one-way chemo parity bill; it indicates carriers must take the out-of-pocket costs for oral medication down to the co-pay for IV therapy. **Mr. Thomas** stated this is good for those patients taking higher priced specialty medications, but would hurt those patients taking generic oral medications costing much less than IV therapy; those taking generic oral medications could see a 90 percent increase in cost. He emphasized the real issue for patients is the increasing costs of cancer medications. He requested that the Committee hold this bill, but if not, he proposed two ways to improve it: 1.) indicate that this applies to FDA approved drugs; and 2.) policies are generally written on a calendar year basis; an effective date of July 1, would cause a problem for insurers.

DISCUSSION: **Vice Chairman Souza** commented that a physician should be able to prescribe the chemotherapy agent, whether IV or oral, that they think is most effective for the particular type of cancer their patient has. She asked if Mr. Thomas would agree with that statement. **Mr. Thomas** indicated he absolutely would. **Vice Chairman Souza** asked if he would also agree that if a health insurance plan lists a certain chemotherapy as part of their coverage, they should then have the same treatment available whether it is a pill or an IV treatment. **Mr. Thomas** responded that IAHP would be neutral on that issue. They want the best, most efficient, care that the doctor prescribes to be available, they also want the chance, through the medical management provisions of the policy, to have a say in that, but ultimately the doctor makes the call. **Vice Chairman Souza** commented that previous testimony from a doctor indicated that many doctors feel they have to check in with the financial side of a policy before they can actually prescribe the medication that they know would most help their patient. She asked Mr. Thomas, if health care plans want to give these patients the best possible medication that the doctor has determined will help them the most, then doesn't he think we need to do something about the difference in these cost factors. **Mr. Thomas** stated the question was difficult, and indicated outrageous pricing is the issue.

TESTIMONY: **Mike Reynoldson**, representing Blue Cross of Idaho (Blue Cross), spoke in opposition to **S 1034**. He stated that the goal of Blue Cross is to provide the best care for members for the best outcomes. He advised Blue Cross now covers 106 different oral cancer prescription drugs. He indicated the price for generics can run between \$4,000 and \$30,000 per year while the price for specialty drugs is between \$100,000 and \$400,000 per year. He emphasized that the Affordable Care Act (ACA) limits an insured's out-of-pocket costs for 2019 to \$7,900; this includes all payments, copayments, deductibles, and coinsurance. Thus, regardless of whether a patient is prescribed an oral cancer medication or cancer IV therapy, the patient's annual cost will be limited to \$7,900. **Mr. Reynoldson** commented that whenever you put something new into the health insurance world something has to give, and it does not always go down; sometimes it goes up. He advised that Blue Cross surveys members on a monthly basis to make sure it is meeting their needs, and to identify trends that it might need to change. He stated that the parity issue addressed in **S 1034** has not arisen in member surveys, and Blue Cross has not had complaints regarding this issue.

DISCUSSION: **Vice Chairman Souza** referenced a coming meeting between big pharmaceutical companies and the federal government regarding escalating drug prices. She asked Mr. Reynoldson whether he thought health insurance carriers would have leverage as a group to influence the price of pharmaceuticals. **Mr. Reynoldson** responded it is a priority to do that. He indicated they could also look at other ideas around transparency, such as why a pharmaceutical might cost less in the United Kingdom compared to the United States, and why the United States is one of the only countries of the world that allows direct to consumer advertising for these drugs as opposed to keeping it in the hands of the physician or the primary care provider.

TESTIMONY: **Norm Varin**, representing Pacific Source Insurance (Pacific Source), spoke in opposition to **S 1034**. He agreed with Mr. Reynoldson that insurance companies certainly want to work together to try to reduce the price of pharmaceuticals, but indicated they need to make sure they pay attention to antitrust rules before appearing on this issue as an industry. He stated that on the issue of oral chemotherapy, Pacific Source works hard to ensure members have access to the appropriate and most efficacious medications to treat cancer. If a member has trouble affording a medication, Pacific Source has dedicated team members to help them navigate financial programs like grants offered by the manufacturers. **Mr. Varin** indicated that during the past year coalitions came forward with concerns about lack of coverage for children who had autism and children with hearing aid devices. He stated that insurance carriers worked with the advocates and the Department of Insurance to solve those problems. He stated, in his opinion, the issue addressed in **S 1034** has not had the same type of conversation. He indicated that Pacific Source benefits already meet the requirements of **S 1034**.

DISCUSSION: **Vice Chairman Souza** commented that it would be to the benefit of the insurance company to focus on what the physician thinks is the most effective treatment for a particular patient. She noted that this could avoid additional costs in the long run. **Mr. Varin** agreed with her statement, and indicated Pacific Source is all about getting patients the best care and the right treatment; however, if the cost of that medication is higher than any other option, that is something they have to face with their benefit design. **Senator Harris** asked Mr. Varin to confirm his previous statement that Pacific Source is already meeting the requirements of **S 1034**. **Mr. Varin** responded that is correct; **S 1034** would not change Pacific Source's benefit design. **Senator Lee** inquired whether any individual taking oral medication would be required to pay the full deductible at a retail pharmacy. **Mr. Varin** responded that they would at most retail pharmacies; however, if the prescription were filled at a facility pharmacy, such as St. Luke's, patients may be allowed to make payments to satisfy the deductible.

TESTIMONY: **Mr. Varin** continued his testimony stating that if **S 1034** does move forward, Pacific Source suggests that the words "and meeting plan coverage criteria" be added to Section 2 at the end of line 16. He stated the reason for this addition is that Pacific Source deploys a whole host of tools, one being that it is an FDA approved drug, to help determine and work with the provider to make sure that what they are approving for that member is the best treatment.

DISCUSSION: **Senator Jordan** questioned whether a licensed oncologist could prescribe a drug that is not FDA approved. **Mr. Varin** acknowledged they could not, but they could prescribe something that is off label that is not indicated for that particular illness. He stated that it is Pacific Source's concern that the language of **S 1034** is too broad.

TESTIMONY: **Marnie Packard**, representing Select Health, spoke in opposition to **S 1034**. She stated that the passage of this bill would impose an additional mandate to the insurers in the State of Idaho, not as a coverage mandate, but as a payment mandate, telling insurers what they can charge for drugs. She reviewed the cost of chemotherapy drugs for Select Health in 2018, indicating that member out-of-pocket cost for oral chemotherapy drugs was actually lower than the IV chemotherapy cost. She stated Select Health has not received a single complaint from any of its members regarding this benefit. **Ms. Packard** commented there is a concern that if this bill is passes, it could lead to other mandates with regard to other diseases that are treated both with infusion therapy and oral therapy.

TESTIMONY: **Dean Cameron**, Director, Idaho Department of Insurance (IDOI), spoke at the request of Chairman Martin regarding a response he wrote to a letter from select legislators regarding oral chemotherapy costs. **Director Cameron** stated that he was not here in an official capacity, but to answer any questions regarding data collected by IDOI from individual and small group plans regarding the use of IV and oral cancer therapies. He indicated the information was gathered at the request of select legislators, and a written report was provided to those legislators on February 11, 2019 (see attachment 1). **Director Cameron** reviewed the results of the research stating that the data shows the cost to Idahoans for cancer therapy is lower if processed as a prescription. He emphasized that an individual covered under an ACA health plan should not be paying more than \$7,900 in out-of-pocket costs in 2019.

DISCUSSION: **Senator Bayer** asked if the \$7,900 out-of-pocket max is on a monthly basis. **Director Cameron** advised it is on an annual basis, and includes both prescription benefits and medical treatment. **Senator Lee** commented that efforts to cover autism and related services as well as hearing aids were initiated by threats of legislation. She noted that although cancer therapy is a more complex issue, perhaps this threat of legislation might motivate people to come to the table to discuss resolutions. She asked Director Cameron to comment on experience in other states with cancer therapy parity issues. **Director Cameron** stated he would pledge his efforts to try to find middle ground to address this issue, with the key being that the consumer pay the least amount possible for cancer therapy. He stated that other states have adopted similar mandates and the jury is still out as to whether they are effective or not effective. **Senator Jordan** referred again to the \$7,900 out-of-pocket cap, and asked if a particular plan does not cover an oral chemotherapy drug, would it not be included in the cap. **Director Cameron** responded that cancer treatment is an essential health benefit, so cancer treatment is covered. What is not covered are experimental treatments or treatments that are outside of the approved treatment possibilities. He stated all of the plans that the IDOI regulates are paying for IV cancer therapy and oral chemotherapy drugs.

Senator Den Hartog concluded that until the drug pricing issue is solved at the national level, she sees this legislation as a potential short-term solution. She indicated the lack of complaints to the IDOI may likely be due to the fact that the physician is trying to work out coverage issues between the patient and the insurance carrier. As to the addition of the language "and meeting plan coverage criteria," she indicated she believes the current language in the legislation does not preclude the carriers from using their normal plan management tools. She indicated that the timing of when the patient must pay the bill for oral chemotherapy drugs is a large part of this issue.

Senator Heider asked if adding the requested language would affect the legislation in a positive or adverse way. **Senator Den Hartog** stated it is her belief that the existing language allows the insurance company to use plan coverage criteria. So while the requested added language may be more specific, she does not believe it is necessary. **Senator Harris** asked Senator Den Hartog to address FDA approved drugs and an effective date. **Senator Den Hartog** indicated carriers would need time to prepare their plans to submit to the Department of Insurance for approval. Regarding FDA approval, she indicated it is her understanding that none of the carriers cover non-FDA approved medications, and she does not believe the added reference is necessary. **Senator Lee** commented that if these requested additions do not change the substantive pieces of **S 1034**, and it would assuage concerns and reduce conflict, perhaps that would be a good step. **Senator Den Hartog** stated she would leave that to the discretion of the Committee, but considering the timing she would hesitate to send it to the 14th Order of Business for possible

amendment. **Vice Chairman Souza** asked if the suggested additional language "and meeting plan coverage criteria," would cause the bill to have a different tone or effectiveness. **Senator Den Hartog** responded that she did not think it would change the intent of the legislation.

MOTION: **Senator Bayer** moved to send **S 1034** to the floor with a **do pass** recommendation. **Senator Jordan** seconded the motion.

DISCUSSION: **Senator Harris** commented that he is not really comfortable with what the bill would do and the possible unintended consequences.

SUBSTITUTE MOTION: **Senator Heider** moved to send **S 1034** to the 14th Order of Business for possible amendment. **Vice Chairman Souza** seconded the motion.

ROLL CALL VOTE: **Chairman Martin** called for a roll call vote on the substitute motion. **Chairman Martin, Vice Chairman Souza, Senators Heider, Lee, Harris, and Burtenshaw** voted aye. **Senators Bayer, Jordan, and Nelson** voted nay.

ADJOURNED: There being no further business at this time, **Chairman Martin** adjourned the meeting at 5:17 p.m.

Senator Martin
Chair

Margaret Major
Secretary

Assisted by Lois Bencken