

MINUTES
HOUSE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, March 19, 2019

TIME: 8:30 A.M.

PLACE: Room EW20

MEMBERS: Chairman Wood, Vice Chairman Wagoner, Representatives Vander Woude, Gibbs, Blanksma, Kingsley, Zollinger, Christensen, Green(2), Lickley, Chew, Rubel, Davis

**ABSENT/
EXCUSED:** None

GUESTS: Travis Watthall and Doug Fuchs, Pharmacists; Eric Bjorkman and Mike Mollsen, Albertsons; Toni Lawson, Id. Hospital Assoc; Tim S. Olson, CVS Health; Cassie Huckabay, Student Pharmacist; Pam Eaton, IRA/ISPA; Melinda Merrill, NW Grocery Assoc.; Françoise Cleveland, AARP-Idaho; Kent Kunz, ISU

Chairman Wood called the meeting to order at 8:31 a.m.

S 1074aa: **Seth Grigg**, Executive Director, Idaho Association of Counties (IAC), presented **S 1074aa**, based on an Idaho Supreme Court decision regarding the sheriff's medical expense responsibility for individuals in their custody. The decision held the county liable for medical expenses, even when the individual was released from county custody. This legislation updates references and clarifies responsibility for court-ordered releases. Upon removal of county responsibility, the individual would be able to apply for the county indigent program.

MOTION: **Rep. Green(2)** made a motion to send **S 1074aa** to the floor with a **DO PASS** recommendation.

Toni Lawson, Vice President, Governmental Relations, Idaho Hospital Association (IHA), testified **in support** of **S 1074aa** based on the amendments. The IHA will monitor the legislation's impact. Answering a question, she said each temporary release case determines who is responsible for expenses.

For the record, no one else indicated their desire to testify.

VOTE ON MOTION: **Chairman Wood** called for a vote on the motion to send **S 1074aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Chew** requested she be recorded as voting **NAY.** **Rep. Zito** will sponsor the bill on the floor.

S 1068aa: **Sen. Jim Patrick**, District 25, presented **S 1068aa** to request the registration of all Pharmacy Benefit Managers (PBMs) with the Department of Insurance (DOI). PBMs work with drug manufacturers, insurance companies, and pharmacists, without any regulatory agency or oversight. They also handle personal consumer financial data without protection. What PBMs do is very complicated, and mostly unknown.

Travis Watthall, Pharmacist, testified **in support** of **S 1068aa**, in response to PBM unfair business practices. There is no oversight or transparency for payments to consumers, insurance companies, and PBM profits.

Answering questions, **Mr. Watthall** said PBMs set prices have an indeterminate spread. Registration will help determine who and how many PBMs are operating in Idaho. PBMs do not sell or purchase drugs.

Doug Fuchs, Owner of Seven Pharmacies, testified **in support** of **S 1068aa**. PBMs need to be recognized and registered as health care professionals.

Tim Olson, CVS Health, testified in opposition to **S 1068aa**, which is an unnecessary regulation and added bureaucracy. PBMs are third party administrators and provide no insurance products. On behalf of their customers, they negotiate lower pharmaceutical and drug costs. Customers include self insurance plans, insurance companies, Medicare Part D, military plans, federal employee health plans, and state government employee plans. PBMs develop drug formularies, contract with pharmacies, negotiate with manufacturers, and process prescription claims.

This legislation is not needed because PBMs are already registering with the Secretary of State and gag clauses, which were federally prohibited, are not in practice in Idaho. Regulation by the DOI is an overreaching rule making authority of private companies. Any regulation should be as third party administrators and legislative.

In response to questions, **Mr. Olson** stated PBMs derive their influence through contracts to negotiate with the drug manufacturers. The consumer is the ultimate payor for PBM services.

Mike Mollsen, Group Director, Managed Care, Albertson's Companies, testified, in support of **S 1068aa**. Although not addressing price transparency, fair reimbursement, or the diminishing pharmacy negotiation leverage, this is a good first step. Without oversight, the PBMs have become anti-competitive and have driven up costs to their advantage. Negative reimbursements put the future of pharmacies in peril.

Answering questions, **Mr. Mollsen** said three of the largest pharmacy companies are owned by PBMs, so they do negotiate and buy drugs. Because of their size, there is no leverage to prevent these three PBMs from driving the industry and directing which pharmacies can be used. The pharmacy is contractually obligated to collect the copay adjudicated in the transaction.

Pam Eaton, President, CEO, Idaho Retailers Association, Idaho Retail Pharmacy Council, and Idaho State Pharmacy Association, testified in support of **S 1068aa**. Although insurance companies and pharmacies are highly regulated, the PBMs have no regulation. Three PBMs control 89% of all prescription benefit transactions, with no transparency. This concern is mirrored in other states passing PBM rules and regulations.

The anti-gag federal law applies only to Medicaid and the Employee Retirement Income Security Act of 1974 (ERISA) programs, not private insurers. The Secretary of State registered business look-up requires the company's name. PBMs should be regulated by the same agency as pharmacies and insurance companies. Another approach could be to add PBMs to the third party administrators regulatory list. PBMs are of value; but, the pharmacies need to know how much reimbursement dollars they will lose so they can make sound business decisions.

MOTION:

Rep. Blanksma made a motion to send **S 1068aa** to General Orders.

For the record, no one else indicated their desire to testify.

Sen. Patrick, in closing comments, said he has worked with **Director Cameron**, DOI, to assure the registration would be possible. Legislative rules review are open to testimony. This is not an anti-business piece of legislation. He noted CVS, a pharmacy with a PBM, just purchased the MET insurance company. The PBM impact to all insurance products led to the DOI placement.

SUBSTITUTE MOTION:

Rep. Chew made a substitute motion to send **S 1068aa** to the floor with a **DO PASS** recommendation.

**AMENDED
SUBSTITUTE
MOTION:**

Vice Chairman Wagoner made an amended substitute motion to **HOLD S 1068aa** in committee.

Committee comments included concerns regarding the rulemaking authority, a better understanding of PBMs, and solutions for smaller pharmacies with less purchasing power.

**VOTE ON
AMENDED
SUBSTITUTE
MOTION:**

Chairman Wood called for a vote on the amended substitute motion to **HOLD S 1068aa** in committee. **Amended substitute motion carried by voice vote. Reps. Davis, Rubel, and Chew** requested they be recorded as voting **NAY**.

RS 27111:

Chairman Wood informed the committee **RS 27111** is an Eagle High School Government Class project. Because this legislation will not be debated as a bill, the committee was instructed to ask any questions.

Maddie Oto, Senior, Eagle High School, presented **RS 27111**. Smoking impacts those around the smoker through second hand smoke (SHS). As part of their Government Class, they decided to take a legislative approach to the issue. Innocent children who are exposed to SHS need a voice and opportunity to protect themselves. This legislation gives them a voice in one scenario.

Julia Furioso, Eagle High School, shared her personal story regarding the impact of SHS on her health. Last year, when she turned seventeen, she finally spoke to her parents about the situation. This legislation will prevent other children from having similar SHS health and family issues.

Rhett Moffat, Eagle High School, shared SHS statistics. The World Health Organization (WHO) reports 41,000 annual SHS premature deaths. Brief exposure can lead to asthma, ear infections, respiratory symptoms, and sudden infant death syndrome (SIDS). Other annual SHS related illnesses include 202,000 asthma flare ups and 34,000 incidences of heart disease. Patients with SHS associated lung cancer experience less effective cancer treatments and have lower survival rates.

Courtney Payne, Eagle High School, stated although there has been significant reductions in smoking at work or other public places, smoking in cars has gone unchecked. Only seven states and two U.S. territories prohibit smoking in cars with children, aged eight to eighteen, present. Voluntary policies do not protect the children, who can not speak for themselves. An 80% to 90% exposure decrease makes a significant difference. This legislation will address the issue as a secondary offence and protect the children.

Responding to questions, **Ms. Oto** explained children cannot voice their choices. This legislation gives them that ability and helps adults make better decisions. As a secondary fine, it would only be available after a driver is stopped for another reason.

MOTION:

Vice Chairman Wagoner made a motion to introduce **RS 27111**. **Motion carried by voice vote.**

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 10:14 a.m.

Representative Wood
Chair

Irene Moore
Secretary