

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Wednesday, February 12, 2020

**TIME:** 3:00 P.M.

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Vice Chair Souza

**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 3:01 p.m.

**H 342** **Relating to Telehealth; Amending Section 54-5703, Idaho Code; Amending Section 54-5705, Idaho Code; and Amending Section 54-5711, Idaho Code.** Tim Olson, representing Teladoc Health, deferred his time to Representative Megan Blanksma who presented **H 342**. **Representative Blanksma** reported that out of 44 counties, 42 face healthcare provider shortages, and noted that currently Idaho Statute has the most restrictive technological language of all states. She alleged that **H 342** will provide increased access to quality health care for Idahoans currently with limited access to care. **Representative Blanksma** explained patients could seek treatment under the Idaho community standard of care including:

- informed consent;
- identification of patient and treating provider;
- adequate and appropriate patient evaluation and diagnosis; and
- an appropriate treatment plan.

She emphasized that this could occur without statutory interference that would arbitrarily dictate the type of technology used, and that **H 342** maximizes patient and care provider choice.

**DISCUSSION:** **Senator Burtenshaw** asked how far Teladoc can go. **Representative Blanksma** replied that providers are still supervised by their respective boards. **Senator Lee** asked for the reasons behind redefining asynchronous or synchronous, and why the audio requirement is being removed. **Representative Blanksma** replied there is not always a need for audio, but whatever is convenient and comfortable with both parties is available.

**TESTIMONY:** Marc Bernard Ackerman, DMD, MBA, Executive Director of American TeleDentistry Association, submitted written testimony in support of **H 342** (see Attachment 1).

**Dr. Donna Campbell**, board certified emergency medical physician, board certified ophthalmologist, Texas State Senator, and subject matter expert for Teladoc, testified in support of **H 342**. **Dr. Campbell** referred to the physician shortage nationwide, and declared that Teladoc increases care for rural areas. She stated she was quite comfortable with telephone access especially if patient records are in front of her, and noted that video requirement is arbitrary. She asserted that barriers to available care should not be put up, but should be removed.

**Robert Baratta**, national consultant for Teladoc, testified in support of **H 342** stating the main purpose of the bill is to increase access to care. He explained how Teladoc achieves this purpose (see attachment 2), and how telehealth can benefit Idaho (see attachment 3). Regarding the opioid issue, **Mr. Baratta** pointed out that federal law prohibits telehealth dispensing opioids without an in-person examination. Asynchronous treatment is often used today in behavioral health, especially for veterans with post-traumatic stress disorder. **Senator Lee** asked what the appropriate establishment of a patient-caregiver relationship would be. **Mr. Baratta** replied that the establishment of care is written in the medical board rules.

**Francoise Cleveland**, representing AARP Idaho, reported that AARP Idaho supports **H 342**. She indicated AARP Idaho is in favor of three specific elements:

- remote patient monitoring;
- allowing the patient's home as an option for originating site; and
- expanding the type of provider-patient encounter allowed in telehealth to include technologies sufficient to conduct a patient evaluation and to diagnose and treat the patient.

**Anne Lawler**, Executive Director for the Board of Medicine (BOM), stated that BOM is not opposed to the changes to the law. She explained that BOM has never interpreted this statute as requiring audio-visual connection for ongoing telehealth services, only for establishing a relationship for the first time. She asserted that a real-time synchronous communication, as simple as a phone call, is needed in establishing a provider-patient relationship to protect the public and provide quality care.

**DISCUSSION:** **Senator Nelson** asked if other qualifiers indicate you don't have to have a phone call. **Ms. Lawler** explained that BOM felt establishing the relationship was better accomplished by phone rather than by text or email. She commented that synchronous communication sets a standard of care that some physicians who prefer to practice online may not think is necessary. Discussion continued regarding amending the bill now rather than changing it by rule later.

**TESTIMONY:** **Elizabeth Criner**, Idaho State Dental Association (ISDA), indicated ISDA is concerned that this legislation creates grey areas creating conflict in the code language and putting patient standard of care at risk. She commented that when the provider-patient relationship is established, it is important to be done by telephone.

**Ken McClure**, Idaho Medical Association (IMA), asked the Committee to be cautious about this bill and pointed out that the Health Care Transformation Council is studying this issue and will complete the study by the end of the year. He stated the IMA would agree to an audio or an audio-visual component to create a provider-patient relationship. **Mr. McClure** stressed that the way this legislation is written does not meet the standard of care of a real-time communication in establishing the provider-patient relationship. He suggested a change in wording on lines 13, 14, and 15, page 2, to say two-way audio or audio-visual interaction.

**Representative Blanksma** responded that the suggested amendments take out some of the best parts of the bill. She explained that statutes are broad and the rules can add specifics at a more fluid rate.

**MOTION:** **Senator Bayer** moved to send **H 342** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

**DISCUSSION:** **Senator Lee** wanted to work on establishment of the provider-patient relationship. **Senator Heider** was concerned that sending the bill for amendment may change the outcome. **Senator Bayer** concurred with Senator Heider and rejected sending it to the 14th Order of Business. **Senator Jordan** supported the substitute motion. **Chairman Martin** was involved in writing the original bill and looked forward to improvements.

**SUBSTITUTE MOTION:** **Senator Lee** moved to send **H 342** to the 14th Order of Business for possible amendment. **Senator Jordan** seconded the motion.

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

**S 1295** **The Dental Practice Act. Elizabeth Criner**, Idaho State Dental Association (ISDA), presented **S 1295** noting that it amends the Dental Practice Act in two sections of Idaho Code to accommodate the advancement of teledentistry. This is done in a manner that is transparent to patients, enhances patient protections, and preserves the community standard of care whether services are provided in person or by telehealth technology. **Ms. Criner** reported there have been complaints from patients that teledentistry procedures have been unclear on how to contact the dentist, and the only contact is with customer service representatives who are not licensed dental or oral health care providers. She explained that **S 1295** will require dentists to provide licensure and contact information, as well as communication regarding the possible need for in-person care. **Ms. Criner** explained the needs involved in using aligners on a patient's teeth and meeting the standard of care.

**TESTIMONY:** **Dr. Laura Lineberry**, Lineberry Orthodontics, spoke in favor of **S 1295**, providing information regarding "do-it-yourself" dentistry and "direct-to-consumer" orthodontics with regard to problems caused by these treatment processes. She shared three examples of patients who:

- never had X-rays taken;
- were not allowed to talk to their treating dentist or orthodontist; and
- did not receive the results they were offered or wanted.

**Dr. Lineberry** went on to explain the processes needed to provide appropriate dental treatment (see attachment 4).

**Dr. Kathleen Beaudry**, periodontist, spoke in support of **S 1295**. **Dr. Beaudry** described the results of inappropriate treatment of a patient. She noted that one patient had no oral exam or X-rays, nor did he ever see a dentist or be given the name of the prescribing dentist or orthodontist (see attachment 5). **Senator Nelson** inquired if this case violates the standard of care for dentistry in Idaho. **Dr. Beaudry** replied that it does. **Senator Nelson** asked if the Board of Dentistry was out of line in not proceeding with an investigation. **Dr. Beaudry** stated that the patient needs to go to the Board of Dentistry with any complaints, but some patients are too embarrassed to do so.

**Dr. Steve Bruce**, State Dental Association, Legislative Committee Chairman, spoke in favor of **S 1295** stating that direct consumer dentistry doesn't follow the standard of care for Idaho.

Brooke Fukuoka, DMD, and owner of Your Special Smiles, PLLC, submitted written testimony in support of **S 1295** (see Attachment 6).

Norman Nagel, DDS, MS, representing the American Association of Orthodontists submitted written testimony in support of **S 1295** (see Attachment 7).

**Robert Barratta**, representing the Smile Direct Club, spoke against **S 1295**. **Mr. Barratta** stated that Smile Direct Club is a national non-clinical administrative support group for licensed dentists. Clear aligner therapy delivers care at 60 percent savings and eliminates approximately 30 orthodontist visits. He reported that to date a million patients have been served. He noted that traditional dentistry opposes this least intrusive of all dentistry, and notes that Idaho Code takes care of all the problems we've seen. **Mr. Barratta** emphasized that if there are practitioners who are not providing proper care, they should be adjudicated according to Idaho Code.

**DISCUSSION:** Discussion ensued between Mr. Barratta, Senator Heider, Senator Lee, and Senator Jordan regarding the handling of cases like those presented, Smile Direct Club's role in the process, the stipulation on page 3 requiring the patient to sign a form that limits him/her from complaining against the treating dentist, and the use of dental records, or lack thereof.

**Elizabeth Criner** stated the proponents of **S 1295** are here because Idaho dentists are seeing patients who have been injured because there is no standard of care being upheld. She stressed that current law disallows the use of a questionnaire by the dentist. **Ms. Criner** emphasized that decay, bone density, and periodontal disease cannot be seen using a scan (picture) rather than an X-ray.

**MOTION:** **Senator Harris** moved to send **S 1295** to the floor with a **do pass** recommendation. **Senator Jordan** seconded the motion.

**DISCUSSION:** **Senator Bayer** stated her belief that people need to be given the chance to use teledentistry. **Senator Nelson** stated these examples given by Dr. Beaudry and Dr. Lineberry appear to be malpractice.

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

**ADJOURNED:** There being no further business at this time, **Chairman Martin** adjourned the meeting at 4:37 p.m.

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Chairman Martin  
Chair

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Margo Miller  
Secretary

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Carol Cornwall  
Assistant Secretary