

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, February 18, 2020

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Agenbroad, Senators Martin, Lakey, Guthrie, Thayn, Souza, Ward-Engelking, and Burgoyne

**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 Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

**MINUTES APPROVAL:** **Senator Lakey** moved to approve the Minutes of February 11, 2020. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**INTRODUCTION:** **Chairman Patrick** introduced Page Kilee Bement and asked her to tell the Committee what high school she attended and to provide some background. **Ms. Bement** remarked she attended Victory Charter School. She attended Girls' State and she wants to become a speech-language pathologist.

**S 1301** **Relating to the Idaho Credit Union Act. Ryan Fitzgerald**, Northwest Credit Union Association (NWCUA), indicated the purpose of this bill is to update and modernize the investment, lending, and fixed asset provisions of the Idaho Credit Union Act (ICUA). The legislation provides flexibility and modern provisions to allow Idaho state-chartered credit unions to better serve their members.

**Mr. Fitzgerald** outlined the updates to the ICUA. He indicated there would be no fiscal impact to the General Fund. The provisions of this legislation specifically relate to the investments and lending practices of state-chartered credit unions and will require no additional resources of the Idaho Department of Finance (IDOF), nor will it increase or decrease the IDOF's revenues or expenditures.

**DISCUSSION:** **Senator Souza** and **Mr. Fitzgerald** discussed the meaning of the word "flexibility" as it applied to the average citizen in Idaho. They also discussed maturity dates, financial literacy, and the relaxation of some of the regulations.

**Vice Chairman Agenbroad** and **Mr. Fitzgerald** discussed the future plans for the credit union.

**TESTIMONY:** **Brad Swartzentenrenber**, Northwest Christian Credit Union, testified in support of the bill. He stated the update should be satisfactory to a broad spectrum of credit unions.

**John Watts**, representing the Idaho Central Credit Union, testified in support of the bill. He gave a brief overview promoting financial literacy in secondary schools across the state.

**MOTION:** **Senator Burgoyne** moved to send **S 1301** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

**H 386** **Relating to Pharmacy Benefit Managers (PBMs).** **Senator Harris** gave a brief overview of PBMs and outlined the four key items addressed by this legislation, namely: 1.) transparency by requiring PBMs to register with the Idaho Department of Insurance (IDOI); 2.) to provide Idaho pharmacists more flexibility in informing patients how they can pay less for prescriptions by prohibiting "gag clauses;" 3.) to ensure transparency by PBMs on how the maximum allowable cost (MAC) for pharmacy reimbursements for prescriptions is determined and requiring that pharmacies are regularly updated on MAC price changes; 4.) and to prohibit PBMs from retroactively denying or reducing a claim for reimbursement, except for legitimate reasons.

**Senator Harris** stated there is no fiscal impact on the State budget. The IDOI already has the structure in place for registrations and reports. Any additional costs of overseeing extra registrations and reports will be covered by the same minimal registration fee that third-party administrators and others are charged.

**TESTIMONY:** **Larry Johnson**, representing CVS Health, testified in opposition to the bill. He stated he would recommend several amendments mirroring language from other states. He stated he wanted to shorten the appeal time from 30 days to 14 days and allow an additional 14 days for the PBM to respond. He mentioned performance-based contracts indicating if a pharmacy met certain benchmarks they would be paid, but if they fall short, they lose out. He said the language in this bill would remove this type of contract.

**DISCUSSION:** **Senator Souza** and **Mr. Johnson** talked about the effects on pharmacies for performance contracts, expectations, benchmarks, and clawbacks.

**Senator Lakey** and **Mr. Johnson** considered the CVS suggestion of shortening the time period for appeals due to the use of technology rather than U.S. mail. They discussed the registration process with the IDOI and the \$86 registration fee.

**Senator Burgoyne** and **Mr. Johnson** exchanged views on whether the PBMs were transparent to consumers.

**TESTIMONY:** **Tyler Higgins**, past president of the Idaho State Pharmacy Association and independent pharmacy owner, testified in support of the bill. He stated the main goal of PBMs was to cut claim reimbursement to pharmacies to force them out of business. **Mr. Higgins** cited a recent incident where his pharmacy was being reimbursed by a Medicare PBM for \$110 less each month than it costs to buy the medications. He noted that would lead to a \$1,300 loss per year, which did not include the cost of labor and packaging. He remarked the patient would have to be sent to another pharmacy. In the meantime, the patient may not likely take the medications properly and incur avoidable health care costs by being hospitalized.

**Mr. Higgins** said the PBMs control how much money he is paid and how much can be clawed back. There are no PBM regulations in Idaho. He cited several more examples of issues he has faced and how he has been reimbursed at a loss by PBMs. Due to this type of issue, many pharmacies, as well as rural pharmacies, have gone out of business or there have been large layoffs. Countless studies have shown how pharmacists have kept

health care costs down. Without pharmacists and community pharmacies, near and long-term health care costs will continue to skyrocket.

**DISCUSSION:**

**Senator Souza** remarked that due to high prescription costs, the PBMs are getting rich. **Senator Souza** and **Mr. Higgins** discussed whether companies and manufacturers would be better off without PBMs. **Mr. Higgins** remarked patients and pharmacies suffer because insurance premiums are increasing and PBMs are getting rich.

**Senator Souza** asked if CVS had a conflict of interest since they own pharmacies, PBMs, and insurance companies. **Mr. Higgins** said he thought there was a conflict. He noted independent pharmacies offer a good service and take care of customers, but cannot compete with a contract when one-third of business is lost.

**Senator Burgoyne** remarked he was concerned about PBMs and indicated there should be transparency for consumers.

**Senator Lakey** and **Mr. Higgins** discussed PBM contracts, penalties imposed on pharmacies if they do not meet performance standards, and clawbacks.

**TESTIMONY:**

**Rob Geddes**, Director for Pharmacy Legislative and Regulatory Affairs, Albertsons Companies, and a licensed pharmacist, testified in support of the bill. He pointed out the CVS suggestion of reducing the appeal window was impractical as there would not be enough time allowed for an appeal. He cited an example where claims were denied on the basis of time constraints. **Mr. Geddes** remarked additional time is needed to re-evaluate the appeal process. He addressed clawbacks, which have affected 25 percent of their business. Sometimes the clawbacks happen from months to years after the fact. The quality of measures vary from one PBM to the next. He noted current contracts are non-transparent.

**Mr. Geddes** cited a letter to the editor from the New York Times that indicated PBMs make piles of money with no proof they are serving patients. He remarked while PBMs claim to keep drug costs low, many PBM practices are anti-competitive and ultimately drive up health care costs for consumers and plan sponsors, while reducing reimbursement to pharmacies. The reduction of payment to pharmacies, where reimbursement falls below the acquisition cost of the drug in many cases, puts the future of retail pharmacies at risk. Giving the IDOI oversight over PBMs would be a good first step in addressing Price transparency issues that plague all pharmacies in the State of Idaho.

**MOTION:**

**Senator Souza** moved to send **H 386** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:**

**Committee Consideration of the Gubernatorial Appointment of Patti Perkins, Director, Idaho Department of Finance (IDOF)**, of Boise, Idaho, for a term commencing January 6, 2020 and serving at the pleasure of the Governor. **Ms. Perkins** gave a brief overview of her background. She outlined her duties at the IDOF as Director.

**DISCUSSION:**

**Vice Chairman Agenbroad** and **Ms. Perkins** discussed the most significant challenge in the IDOF. They discussed staffing and the effect retirements will have on those positions.

**Senator Burgoyne** and **Ms. Perkins** discussed a possible conflict of interest with her business and that a senior level colleague has taken on the clientele.

**Chairman Patrick** remarked that due to time constraints, the Committee would vote on the gubernatorial appointment at the next meeting.

**ADJOURNED:**

There being no further business at this time, **Chairman Patrick** adjourned the meeting at 3:01 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary