

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 10, 2021

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Martin, Vice Chairman Riggs, Senators Heider, Lee, Harris, Agenbroad, Stennett, and Wintrow

ABSENT/ EXCUSED: Senator Zito

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 3:03 p.m.

RS 28503 **Relating to Physician Assistants. Kent Kunz**, on behalf of the Idaho Academy of Physician Assistants (IAPA), introduced himself to the Committee. **Mr. Kunz** described the professional requirements to become a physician assistant (PA) and a PA's role in providing health care. He reported the RS is the result of a collaborative effort among the Idaho Medical Association, Idaho State Board of Medicine (BOM), Idaho Division of Professional and Occupational Licenses (DOPL), IAPA, and other stakeholders. **Mr. Kunz** remarked the RS will reduce unnecessary regulation and administrative burdens while maintaining proper oversight of PA licensees.

MOTION: **Senator Heider** moved to send **RS 28503** to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

RS 28456C1 **Relating to Medicaid. Jason Kreizenbeck**, representing Mountain View Hospital, introduced himself to the Committee. **Mr. Kreizenbeck** stated the RS will create a new category of Medicaid reimbursement to allow new hospitals to be reimbursed at the rate of 91 percent of costs for the first 36 months of operation. He added the facility would move to the State's value-based reimbursement system after 36 months.

MOTION: **Senator Harris** moved to send **RS 28456C1** to print. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

H 37 **Relating to Nurses. Tim Frost**, Regulatory Affairs Manager, DOPL, introduced himself to the Committee on behalf of the Idaho Board of Nursing (BON). **Mr. Frost** advised the bill updates the BON's practice act to allow the BON to take disciplinary action against a licensee at the time the licensee enters a guilty plea for a criminal conviction. He stated the BON may take certain actions based on criteria established in the Occupational Licensing Reform Act, but under current law the BON cannot act until the licensee has been convicted of the crime. **Mr. Frost** said the change stems from a 2019 case involving a Magic Valley licensed nurse who entered a guilty plea for evidence tampering in relation to a Colorado murder case. He added the BON was forced to wait until the case was completed before taking action against the licensee. **Mr. Frost** explained that news of the guilty plea was visible to the public, but the nurse maintained an active, unrestricted nursing license. He remarked the bill would prevent this type of situation in the future. **Mr. Frost** commented there is no fiscal impact to the General Fund or the BON dedicated fund.

MOTION: **Senator Wintrow** moved to send **H 37** to the floor with a **do pass** recommendation. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

H 38 **Relating to the Idaho Telehealth Access Act.** **Tim Frost** presented the bill on behalf of DOPL's Health Professions Section. **Mr. Frost** reported **H 38** updates the Idaho Telehealth Access Act (Act) to allow for prescribing of controlled substances through telehealth. He explained the reference to 21 U.S.C. section 802(54)(a) in the Act makes Idaho law more stringent than federal law, and he stated the bill strikes that reference. **Mr. Frost** noted the bill would allow Idaho licensed providers to quickly adapt to any new allowances afforded by the U.S. Drug Enforcement Administration (DEA). For example, in response to the COVID-19 health emergency, the DEA adopted policies to allow practitioners to prescribe controlled substances without in-person patient interaction, he said. **Mr. Frost** added that Idaho was able to waive the requirements only because of the Governor's emergency declaration order. He remarked the legislation would help patients with opioid use disorder receive treatment through telehealth. **Mr. Frost** stated the Idaho State Board of Pharmacy (BOP) and BOM support the change, and there is no fiscal impact to the General Fund or the agencies' dedicated funds.

MOTION: **Senator Stennett** moved to send **H 38** to the floor with a **do pass** recommendation. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

H 39 **Relating to Controlled Substances.** **Tim Frost** presented the bill on behalf of DOPL's Health Professions Section and the BOP. **Mr. Frost** explained the bill updates the Controlled Substances Act and transitions oversight of the Prescription Drug Monitoring Program (PDMP) from the BOP to DOPL. He stated the PDMP is a Statewide electronic database implemented in 1997 that collects data on controlled substances dispensed in Idaho to assist with patient care and combat opioid abuse. **Mr. Frost** described the changes in the bill necessary to effect the transition and added that the bill does not change the structure or services of the PDMP. He mentioned that DOPL employees would be allowed to view private prescription information, which will streamline controlled substance investigations across all health care boards. **Mr. Frost** added that the bill results in no fiscal impact to the General Fund or the BOP's dedicated fund.

DISCUSSION: **Senator Lee** inquired about the cost of the transition and asked how the additional duties involved with maintaining the database would be absorbed by DOPL. **Mr. Frost** answered that the PDMP will continue to operate in the same manner as the present time. He remarked the health care boards are presently moving to DOPL under one appropriation. **Mr. Frost** added that investigators within the health professions section will be able to work together to help each other.

Senator Agenbroad asked what role the health boards will play if their authority is moved to DOPL. **Mr. Frost** responded that while oversight authority for the PDMP will transition from the BOP to DOPL, decisions on disciplinary actions against pharmacists will continue to be made by BOP board members who are subject matter experts.

Vice Chairman Riggs commented the bill is primarily an administrative alignment issue and wondered whether there are concerns about the ability to keep track of potential compliance issues with many agencies moving to DOPL at the same time. **Mr. Frost** replied that DOPL is proceeding cautiously with the transition to ensure no patient safety is compromised. He stated the staffing, outreach, and administrative work related to the PDMP will remain the same. **Mr. Frost** added the PDMP is very successful, with increased utilization through the State. He repeated the bill will allow investigators to work together on cases rather than change how the PDMP is used by licensees.

MOTION: **Vice Chairman Riggs** moved to send **H 39** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

H 40 **Relating to Pharmacists.** **Tim Frost** presented the bill on behalf of the Health Professions Section, DOPL, and the BOP. **Mr. Frost** explained the bill amends the Pharmacy Practice Act by updating the Wholesale Drug Distribution Act, making permanent certain restrictions waived during the pandemic and removing unnecessary duplications. He explained the bill removes five pages of outdated statute that is more restrictive than federal law and moves essential elements of the law to a new location. **Mr. Frost** stated the bill changes references to "license" or "registration" to "certificate" but does not create any new licenses or registrations. He reported that age restrictions on patients receiving immunizations from a pharmacist were waived during the pandemic, and the bill makes that waiver permanent. **Mr. Frost** advised the bill clarifies that a health care professional may prescribe naloxone or epinephrine to any patient or entity to ensure these life-saving medications are readily available and accessible. He remarked the bill results in no fiscal impact to the General Fund or the BOP dedicated fund.

MOTION: **Senator Harris** moved to send **HB 40** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1060 **Relating to Public Health Districts.** **Senator Vick** presented the bill to change the process for enacting a countywide or district-wide health order. He explained the bill requires approval of the county commission before a countywide or district-wide order could go into effect, limits such an order to 30 days, and changes a violation from a misdemeanor to an infraction. **Senator Vick** advised that any other type of order issued by a health district would continue to be effective immediately. The county commission of each affected county would have seven days to approve the order by resolution, he said. **Senator Vick** opined that elected officials should be making decisions affecting their citizens. He added the bill would have no impact on the ability of a city to issue a citywide order and it does not change the composition of a health district board. **Senator Vick** commented that many law enforcement officers refused to issue a misdemeanor citation for not wearing a mask, and changing the penalty to a \$50 infraction might have the effect of increasing enforcement.

DISCUSSION: **Senator Stennett** suggested the health district boards should be comprised solely of commissioners, if county commissioners will be making the decisions, and she asked why people who are not county commissioners or health care providers are allowed to be board members. **Senator Vick** responded it was not his intention to change the composition of a health district board because most of the board's work is unrelated to countywide or district-wide orders. He expressed his belief that the current requirement for a doctor to sit on a health district board should be maintained. **Senator Vick** explained one of the primary complaints about the present statute is that board members can approve a mandate for one county while not placing the same mandate on their own counties. He added the bill will allow decisions to be made locally and not by board members from another county.

Senator Stennett commented that her health district has eight counties, and she asked for clarification that the bill would not preclude a county from approving an order if the other counties disapproved it. **Senator Vick** replied that one county could accept a mandate if others did not. **Senator Stennett** asked how a city would have autonomy to impose a mandate if the county did not approve the same mandate. **Senator Vick** answered that the cities' authority would not change. **Senator Stennett** asked whether a city is preempted from taking an action by the county's decision, and what the result would be if a city approved a mask mandate but the county did not approve it. **Senator Vick** responded that cities have authority under Idaho Code not available to health districts, and that would not change. He added it would be possible for a city to have two orders in place at the same time, one from the city and one from the health district.

Senator Wintrow recalled the Committee had a presentation on the purpose and composition of health districts and the process to appoint board members. She asked the reason for the proposed change at this time, whether it is because existing law did not result in good health outcomes or someone disagreed with the decisions made by the health districts. **Senator Wintrow** stated she is contemplating the best place for decision-making authority. **Senator Vick** replied the composition of a district health board is found in Idaho Code Chapter 4, Title 39 together with the method of board member selection. He reported he did not receive complaints about health district boards until this year, but the pandemic raised unanticipated issues. **Senator Vick** stated his opinion that decisions about regulating behavior and business operations should be left to elected officials, and that is his sole reason for bringing this bill.

Vice Chairman Riggs clarified that a county cannot refuse to enforce a Statewide order but can enact a stricter mandate. **Senator Vick** replied that is also his understanding. **Vice Chairman Riggs** asked if the health district boards have been receptive to the proposed changes, and if the goal is to allow medical professionals to debate the issues from a scientific rather than political standpoint. **Senator Vick** responded that Michael Kane on behalf of the health district boards could better answer that question.

Michael Kane, representing the Idaho Association of District Boards of Health, introduced himself to the Committee. **Mr. Kane** stated the health district boards discussed **S 1060** with Senator Vick and others and support the legislation.

TESTIMONY:

Mr. Kane testified in support of the bill. He commented county commissioners appoint all health district board members and vote on them. **Mr. Kane** reported it is sometimes impossible to have county commissioners comprise an entire health district board because the board has seven members and some districts consist of only four counties. He added that valuable contributions of health professionals would be lost if county commissioners were the only board members. **Mr. Kane** stated it is reasonable to have elected officials make the decisions after consulting with the health district boards. He advised the bill does not affect the vast majority of a health district's work. **Mr. Kane** confirmed the cities have authority to implement their own orders.

DISCUSSION: **Senator Stennett** asked the benefit of having health district board members who are not health professionals or elected officials. **Mr. Kane** replied some board members are retired county commissioners who have served for many years, and a county commissioner on a health district board is an appointee. He added a health district board could vote for a countywide order that the other commissioners in a county oppose. **Mr. Kane** reported the health district boards see this as the best alternative to changing the composition of the board. **Senator Stennett** asked about the other duties of health district boards and inquired how a pandemic that requires health expertise differs from those other duties. **Mr. Kane** answered that 90 percent of a health district's duties involve one-on-one interactions between staff and constituents. He responded by saying in a pandemic, the health district boards listen to the health professionals and make orders based on their feedback and recommendations from the Centers for Disease Control and Prevention. **Mr. Kane** added that closing businesses are political decisions that affect lives and livelihoods, and county elected officials should have greater involvement in those decisions.

Senator Wintrow stated she is becoming more comfortable with the legislation. She compared it to the Governor listening to health experts and making the final decision on Statewide orders. **Mr. Kane** replied it is a good analogy. **Senator Wintrow** added it would be helpful if the health district boards were comprised of many health professionals. She asked how many health professionals serve on a health district board and what their qualifications are. **Mr. Kane** responded every health district board has a different composition and reiterated that board members receive advice from many health professionals.

TESTIMONY: **Bryon Reed**, Chairman, Eastern Idaho Public Health Board of Health (EIPH Board), testified in support of the bill. **Mr. Reed** expressed appreciation for the efforts of the bill's sponsor to bring the legislation. He commented the EIPH Board was given a great responsibility due to the pandemic. **Mr. Reed** mentioned his Board relies heavily on the health professionals who testify at their meetings. He explained EIPH Board members also consult with the county commissioners before adopting a countywide health order, but this bill will alleviate some concerns expressed by county residents. **Mr. Reed** added the violation of a countywide health order is presently a misdemeanor, so the EIPH Board did not advocate for enforcement. He opined that changing a violation to an infraction is necessary and wise.

Bill Leake, EIPH Board member, testified in support of the bill. **Mr. Leake** stated he is a former Teton County commissioner. He remarked the bill gives authority to elected officials, and commented that the counties and health district boards make decisions based on advice from health professionals.

MOTION: **Vice Chairman Riggs** moved to send **S 1060** to the floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

DISCUSSION: **Senator Stennett** advised she would support the motion because of confusion over why non-elected officials are allowed on health district boards. She supports the idea of putting the decisions in the hands of elected officials.

Senator Wintrow commented she appreciated Senator Vick's presentation, and the testimony from Mr. Kane and others convinced her to support the motion. She noted the decision is a difficult one because the pandemic is ongoing and emotions are running high. **Senator Wintrow** stated her reluctance to legislate until the pandemic has concluded or change the rules simply because a decision is unpopular. She added the Governor as an elected official has authority to make Statewide orders in an emergency, and the recourse for an unpopular decision is the election process. **Senator Wintrow** urged consistency in changing the law.

Senator Lee said she supports the motion and appreciates Senator Vick's work. She noted it is compelling that all seven health district boards have joined in support of the legislation. **Senator Lee** remarked the legislation strikes a balance between local control and health concerns. She added the bill allows counties and elected officials to have a say in what is imposed in their areas.

Chairman Martin mentioned he was not in support of the bill when he first saw it, but after many meetings and discussions, he will support the motion. He opined this is a very good bill, and he clarified his vote is not in opposition to Central District Health's decisions. **Chairman Martin** stated his belief that the bill will minimize further protests at health districts by moving this type of decision-making to elected officials. He added he is also reluctant to make changes in the middle of an emergency, but this is a good piece of legislation built on consensus.

VOICE VOTE: The motion to send **S 1060** to the floor with a **do pass** recommendation carried by **voice vote**.

PRESENTATION: **Home Care Industry. Nichole Claiborn**, Executive Director of Home Care, Terrace Home Care, introduced herself to the Committee on behalf of the Idaho Association of Home Care Agencies. **Ms. Claiborn** described the functions of the home care industry and presented challenges to the industry in accordance with Attachment 1.

DISCUSSION: **Senator Wintrow** asked how many home health caregivers are in Idaho. She mentioned her father required home health care and stated it is important to have trained, qualified caregivers. **Senator Wintrow** inquired about the required training and the effect training requirements have on caregiver salaries. **Ms. Claiborn** responded the training is necessary because often caregivers do not have any health care experience. She stated the training is eight hours and the Idaho Department of Health and Welfare (DHW) requires a set curriculum. **Ms. Claiborn** added there is a cost for the training, and the caregiver must be paid for training time. She noted DHW has added documentation requirements for caregivers which further increases costs. **Senator Wintrow** remarked that society must decide how much investment is needed to provide the best care for an aging population.

Senator Agenbroad asked what rate increase is sought. **Ms. Claiborn** answered the previously agreed increase with DHW was \$9 million per year. **Senator Agenbroad** asked how that amount would translate to reimbursement rates. **Jeremy Chou**, representing the Idaho Association of Home Care Agencies, introduced himself to the Committee and stated it would amount to approximately \$2 an hour in reimbursement rates. **Senator Agenbroad** inquired if the increase will take effect on July 1. **Ms. Claiborn** replied the increase was agreed upon and would have been part of the 2021 DHW appropriation but it was cut because of the pandemic.

Senator Lee asked for information on Ms. Claiborn's conversation with DHW regarding the increase. **Ms. Claiborn** answered that DHW has been responsive, but the caregivers were told there is no money in the budget to increase funding for personal care services. She added that agencies were restricted from applying for COVID funds because those funds were intended to address COVID issues and not cover the cost of ongoing provider increases. **Senator Lee** commented the issue of provider payments is a continuing concern. Solutions are needed to provide the required services at a cost that will allow the State to attract caregivers for some of the most vulnerable Idahoans, she said. **Senator Lee** thanked Ms. Claiborn for bringing this matter to the Committee's attention and said she supports addressing the provider payment issue at a time of budget surplus.

ADJOURNED: There being no further business at this time, **Chairman Martin** adjourned the meeting at 4:34 p.m.

Senator Martin
Chair

Jeanne Jackson-Heim
Secretary