

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 27, 2023

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman VanOrden, Vice Chairman Zuiderveld, Senators Lee, Harris, Bjerke, Wintrow, and Taylor

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 VanOrden** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:16 p.m.

S 1072 **DISINTERMENT - Amends existing law to revise provisions regarding the disinterment of a body.** **Senator Winder** explained this dealt with family members who wanted to appoint another person to be their designee, and witness the relocation process of a casket.

TESTIMONY: **Michael Johnson** testified in support of **S 1072**. He stated he had been in law enforcement and coroner work for 45 years. He shared with the Committee what he experienced during this difficult process, as it was something not everyone would want to see.

DISCUSSION: **Vice Chairman Zuiderveld** asked how often the process of moving deceased persons happened. **Mr. Johnson** stated he did not know, as it was a very difficult process.

Senator Wintrow inquired if there were other reasons for disinterment that could present any legal issues. **Mr. Johnson** answered not that he knew of.

TESTIMONY: **Tony Valdez**, Counsel and Executive Secretary, Idaho Funeral Services, testified in opposition of **S 1072**. As a licensed mortician, she was required to oversee the disinterment and removal process. She stated that only upon a verified application of the person having the highest authority under the provisions of Idaho Code § 54-1142, however that section was not a list of persons who had disposition authority.

DISCUSSION: **Senator Lee** asked why it bothered her to allow a family to designate another party to oversee the disinterment. **Ms. Valdez** responded it would require a funeral director to allow the designee to be present as the funeral director was required to be there.

Senator Taylor asked if the funeral director had the authority to decide who could be present. **Ms. Valdez** answered yes, as the Statute was currently written.

Senator Bjerke asked who was allowed to make that decision pursuant Idaho Code § 54-1142. **Ms. Valdez** replied disposition authority was given in the absence of a prearranged funeral plan.

Senator Wintrow asked what the main issue was in what Senator Winder proposed. **Ms. Valdez** responded one cannot delegate authority the Statute gave to someone else for the disposition of those remains.

Senator Taylor asked how often during the funeral planning process was the issue of disinterment considered. **Ms. Valdez** replied it was not considered often.

TESTIMONY:

Randy Basterrechea testified in opposition of **S 1072** as it mandated a legal next of kin or a representative for a legal next of kin be present at the disinterment. He had personally been involved in many disinterments throughout his career, and there were many uncomfortable variables that could occur for those involved in that process.

Senator Wintrow asked if there was an issue for a designee to attend that process. **Mr. Basterrechea** replied no, however, under the bill, it would mandate a family member or designee be present.

Senator Bjerke declared a 39 H for a possible conflict of interest.

MOTION:

Senator Lee moved to send **S 1072** to the floor with a **do pass** recommendation. **Senator Zuiderveld** seconded the motion. The motion carried by **voice vote**.

H 70

COUNTY INDIGENT SERVICES AND FINANCES - Amends and repeals existing law to revise provisions affected by the repeal of the County Indigent Program and the Catastrophic Health Care Cost Program (CAT). Representative Vander Woude explained in 2022 the CAT Fund was discontinued.

Kelly Brassfield, Idaho Association of Counties, stated this addressed the county jail medical statutes with the repeal of the Indigent Program. With the repeal of that section, there was no longer a reference that allowed claims to be priced at the reduced Medicaid rate. Currently, individuals could offer a settlement request. The CAP board had the authority to review the case and settle if it's above 75 percent. With the repeal of that section, there was no longer a reference that allowed those claims to be priced at the reduced Medicaid rate. There was no longer a board to make that settlement request approval or to approve the annual report or audit.

TESTIMONY:

Brian Whitlock, Idaho Hospital Association, testified in support of **H 70**. He stated H 316 (2021), eliminated the CAT Plan and the County Indigent Plan. This bill codified what was available before those plans were eliminated. He explained with that loss, any indigent or catastrophic cases left the hospitals to carry that cost burden. Those two programs had an impact in the \$20 to \$30 million range statewide.

MOTION:

Senator Taylor moved to send **H 70** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

S 1091

PUBLIC ASSISTANCE - Amends existing law to provide a civil penalty for public assistance providers who fail to timely complete required training for staff. Lori Stiles, Manager, Medicaid Program Integrity Unit, Department of Health and Welfare (Department), explained this legislation added additional authority to assess civil monetary penalties for noncompliance of rules and regulations associated with the protection of vulnerable Idahoans through criminal history, background checks and required training for proper Medicaid Participant care.

DISCUSSION: **Senator Wintrow** asked if the fines would be issued directly by the Department or if they would be issued by a third party broker or managed care provider. **Ms. Stiles** stated those penalties were assessed by the Department to the provider who employed those individuals.

Senator Lee inquired if the Department communicated with employers when a background check had not been completed. **Ms. Stiles** explained they worked closely with the Criminal History Unit to ensure penalties were not assessed when the process was slow, as the Department had ability to be flexible in those situations.

Senator Wintrow inquired if that happened often. **Ms. Stiles** replied if they were not getting the Idaho State Police check or their employee was not linked to that employer, there was no one to reach out to them about those problems. **Senator Wintrow** asked if the contract could be terminated for those individuals with persistent neglect of background checks. **Ms. Stiles** replied the Department believed a monetary penalty was not as harsh of a penalty as terminating a provider from the program.

Senator Wintrow asked how the Department's system helped providers ensure background checks were completed on time, and what the cost was to complete the background check. **Fernando Castro**, Criminal History Unit Supervisor, Department of Health and Welfare, stated there was an online background check system, and changes were made to the procedure which allowed applicants to work before being cleared because the applicant's fingerprints had been taken, as that clearance could take up to 4 months. The cost of the background check range from \$65 dollars per person.

MOTION: **Senator Lee** moved to send **S 1091** to the floor with a **do pass** recommendation. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

S 1009 **HEALTH - Amends and adds to existing law to clarify the health rights of Idahoans.** **Senator Foreman** explained this legislation created a revised section in Idaho Code § 39-9004, that established health rights under the law for medical patients, their family members and legal guardians.

DISCUSSION: **Senator Lee** inquired about the inclusion of sexual orientation, in that gender identity in those areas were already codified in federal law. **Senator Foreman** responded the State of Idaho does not contain the language sexual orientation or gender identity. He did not want individuals turned away for those reasons.

Senator Lee asked if it would be more appropriate to state 'no person for no reason at all should ever be turned away.' **Senator Foreman** answered he felt it was important to add more specificity and refer to federal law.

Senator Taylor asked if he knew of a time when a human being in Idaho was refused medical attention based on their sex, age, race, national origin, ethnicity, religion, sexual orientation, gender identity, veteran, military status or any other basis. **Senator Foreman** replied yes, a family member was denied medical care because she refused the COVID-19 vaccination.

Senator Wintrow inquired if this bill could potentially prohibit hospital employees from wearing masks, as the hospital was a political subdivision. **Senator Foreman** replied it would depend on the funding of the hospital, how it was structured, organized and financed.

Senator Taylor asked how the language 'where no patient shall be administered any experimental drug' would work with Idaho Code, Title 39, and the Right to Try Act. **Senator Foreman** replied the bill stated 'with informed written consent'.

Senator Wintrow inquired about the language 'visitation by patients, family members or legal guardians, that it shall be allowed unless the patient refuses visitation or visitation was presently denied by the attending physician for medical reasons, in the best interest of the patient', and how that could be handled when patients were all in one facility. **Senator Foreman** replied it is in the physician's best medical judgment to restrict visitation.

TESTIMONY IN FAVOR:

The following testified in favor of **S 1009**: Dale Ortmann; Amber Drake; Mike Lewis; Kathleen Beynun; Gresham Bouma; Lyle Johnstone; Kathy Thomsen; Angelica Eberstein; and Maria Leibler.

TESTIMONY IN OPPOSITION:

The following testified in opposition to **S 1009**: Kelley Packer; Emile Jackson-Edney; Blaine Conzatti; and Alicia Abbott.

TESTIMONY:

Toni Lawson, Idaho Hospital Association, testified opposition of **S 1009**. She informed the Committee the new section of the proposed statute would apply to state and political subdivisions of the state or public health districts, as that would apply to some hospitals but not others. She opined that many parts of the legislation were duplicative to state and federal law, as that agency mandated what hospitals must do in regards to the patients and HIPAA.

DISCUSSION

Senator Bjerke asked how many of the federal statutes were violated during COVID-19. **Ms. Lawson** was not sure if there was a specific area that was violated. **Senator Bjerke** asked how a patient's right to choose their health care provider could affect private insurance. **Ms. Lawson** replied she did not know if it would conflict with that insurance carrier.

Senator Wintrow asked what would be the most catastrophic thing that could happen if the bill were to pass. **Ms. Lawson** opined in her experience, legislation that was duplicative and contained unnecessary language created confusion as one section of code overlapped another. For example, a hospital cannot remove the mask mandate because it was a federal requirement.

Nikki Zogg, Director, Southwest District Health, testified in opposition of **S 1009**. She stated it would prohibit public health districts from issuing orders to protect the health of the community. She believed it conflicted with existing Idaho Code, Title 39, Chapters 14 and 15, and the term 'extreme medical emergency' was not well defined.

Senator Lee asked if she thought this bill would have prevented her public health district from making any of those recommendations when promoting vitamin D or other therapies. **Ms. Zogg** stated her concern about the bill language was that it's not specific enough where a provider could recommend or prescribe alternative therapies because they were considered off label. She understood the way the bill was currently written, it could include things like zinc, vitamin B, and even Hydroxychloroquine, before there was a COVID-19 vaccine available.

MOTION:

Senator Zuiderveld moved to send **S 1009** to the floor with a **do pass** recommendation. **Senator Bjerke** seconded the motion.

SUBSTITUTE MOTION:

Senator Wintrow made a substitute motion to send **S 1009** to the floor with no recommendation. The motion failed due to no second..

**ROLL CALL VOTE
ON ORIGINAL
MOTION:**

Chairman VanOrden brought the original motion before the Committee. **Vice Chairman Zuiderveld, Senator Bjerke** and **Senator Wintrow** voted aye. **Chairman VanOrden, Senator Lee,** and **Senator Taylor** voted nay. **Senator Harris** was excused. The motion failed.

ADJOURNED:

There being no further business at this time, **Chairman VanOrden** adjourned the meeting at 5:25 p.m.

Senator VanOrden
Chair

Michelle Tierney
Secretary