

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, February 28, 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.

PASSED THE GAVEL: Chairman VanOrden passed the gavel to Vice Chairman Zuiderveld.

16-0302-2201 **Skilled Nursing Facilities - Temporary and Proposed Rule.** **Laura Thompson**, Bureau Chief of Facility Standards, Division of Licensing and Certification, Department of Health and Welfare (Department), explained the Idaho Health Care Association, which represented all 80 skilled nursing facilities in Idaho, requested the Department consider allowing certified medication assistants to administer medications in facilities. Currently, the licensing rules only allow a registered nurse (RN) to complete that task.

MOTION: **Senator Wintrow** moved to approve **Docket No. 16-0302-2201**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

H 83 **HEALTH - Amends existing law to revise eligibility requirements for the Conrad J-1 Visa Waiver Program and the National Interest Waiver Program.** **Representative Healey** stated the current requirements mandated facilities that requested the J-1 or visa waiver physicians must demonstrate they tried for six months to recruit physicians within Idaho or the United States. Due to the shortage of providers in underserved areas, the bill proposed that time be reduced to 3 months.

Senator Wintrow asked what the Idaho Conrad J-1 Visa Waiver Program did. **Representative Healey** explained it allowed physicians from other countries to come in on a visa waiver to work in Idaho for 3 to 5 years.

TESTIMONY: **Gina Pannell**, Chief, Bureau of Oral Health and Primary Care, Division of Public Health, Department of Health and Welfare testified in favor of **H 83**. She stated those that had used this waiver had reported much success when recruiting key, long term providers for vacancies that had been difficult to fill.

MOTION: **Senator Harris** moved to send **H 83** to the floor with a **do pass** recommendation. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

S 1052 **OPTOMETRISTS - Amends existing law to provide for the practice of optometry to include certain therapeutic laser procedures under certain circumstances.** **Senator Grow** explained this would allow only those optometrists who were certified, and received the required education and training to use those three specific laser procedures in their offices.

Lance Giles, lobbyist, informed the Committee the benefits of this bill were safety, increased competition based on free-market principles, and improved access and consumer choice. The following therapeutic laser procedures were limited to 3 in-office procedures, performed in an outpatient setting:

- The Laser Capsulotomy (CAP), which uses the energy of the laser to remove cloudiness that develops on the lens implant after cataract surgery.
- The Peripheral Iridotomy (LPI), which uses a low-energy laser to prevent blindness should an angle-closure develop.
- The Laser Trabeculoplasty (LT), which uses short laser pulses to target pigment cells in a network of channels to reduce eye pressure (see Attachment 1).

Senator Lee asked what efforts were made between optometrists and Ophthalmologists to come an agreement since the last time the proposed bill was presented. **Mr. Giles** stated after the print hearing, he did reach out to the lobbyist for the Idaho Society of Ophthalmologists. He asked him what he thought of the bill and if any compromise was available. They were still opposed to the bill.

Senator Bjerke asked if there was an increase in optometrists providers in rural areas in the State. **Dr. Reynolds**, President, Kentucky Board of Optometric Examiners stated they have seen substantial increased access in rural areas, with about 120 optometrists performing those procedures currently.

Senator Taylor asked how many of those procedures were based on an emergency situation, or was this a procedure that could wait for appointment. **Dr. Reynolds** responded the LPI would be considered an emergency treatment. **Senator Taylor** asked what the wait time was in Idaho was for one of the three non-emergent procedures. **Dr. Reynolds** responded the wait time in Kentucky was around 2 months.

Senator Taylor asked if there was any information on Idaho. **Dr. Huber** answered they did not have that data, however, it depended on where the patient was located. **Senator Taylor** asked when an optometrist had a problem if they sought a second opinion before performing a surgery. **Dr. Aaron Bronner**, Optometrist, Pacific Cataract and Laser Institute, answered their facility was 2 months out for patient evaluations. An optometrist would refer a patient for any number of different procedures. There was no second clinic visit unless the patient needed to return for a procedure.

TESTIMONY:

Dr. Aaron Bronner testified in favor of **S 1052**. He informed the Committee that optometrists were capable of dealing with complications that may result from those procedures, as those complications were very rare. If there was a complication, it was almost always from increased pressure or inflammation inside the eye. YAG lasers have been linked to the risk of a significant complication called a retinal detachment. In his career he had seen 5,000 YAG laser treatments, and never saw a retinal detachment as a result. If a patient were to come in with retinal detachment, an optometrist would manage it the same way an ophthalmologist would. They would not treat the retinal detachment, they would refer the patient to a trained retina specialist.

Dr. Kathy Lee, pediatric ophthalmologist, St. Lukes Hospital, testified in opposition of **S 1052**. She stated since 1999, she saw 4 retinal detachments. In the last five years, there were 45 attempts to expand the scope of optometrist practice in 20 states, and only 5 accepted that expansion. Recently, there was a decision in South Dakota to reject that expansion.

DISCUSSION:

Senator Bjerke asked if the motivation to expand was out of the sense of need. **Dr. Lee** replied she was not sure that expanding scope was going to provide that much greater access to rural communities.

TESTIMONY: **Dr. Rodney White** testified in favor of **S 1052**. He stated Idaho Code § 54-1501 defined a particular procedure performed by an optometrist called a 'foreign body removal'. The American Medical Association (AMA) coded that procedure as an in office surgical procedure, and the Idaho Medicaid Provider Handbook lists 16 surgical procedures performed by optometrists.

Dr. Brett Betts, President, Society of Ophthalmology, testified in opposition of **S 1052**. He opined the bill should not be approved as it was currently written. The wait time for YAG laser treatments in his office was 2 to 4 weeks, and that had not changed in the last 3 years. He reminded the Committee that this bill was rejected 3 years ago by the Legislature.

DISCUSSION: **Senator Taylor** asked how many of those procedures were performed in Idaho each year. **Dr. Betts** replied he did not know what the total number was, however, in his personal practice, he had completed 350 YAG laser treatments within last year.

Senator Bjerke inquired if there was a future for access in rural settings. **Dr. Betts** replied those lasers had very expensive service contracts, and a provider would need to do enough procedures in a certain time period to make it economically feasible.

TESTIMONY: **Dr. Todd Slusser** testified in support of **S 1052**. He stated the ophthalmologist who authored the Oklahoma study did not look at actual outcomes, but merely tallied the number of sessions billed per patient at a time when an optometrist was conservatively splitting treatments into two sessions with some patients. He stated that was a technique developed by ophthalmologists to reduce inflammation. There were 11 ophthalmologists nationwide who averaged more sessions per patient than any other optometrist. The study data showed that if an ophthalmologist does the initial laser procedure, the patient was twice as likely to need incisional glaucoma surgery. A recent report published by Colorado disagreed with Vermont and recommended that optometrists practice to their full level of training, including laser procedures.

Dr. Dan Gealy testified in opposition of **S 1052**. As a retina specialist, he stated there was one fifth of a millimeter, 200 microns, was the difference between a successful laser and permanent damage to the lens or permanent damage to the vitreous in the back of an eye. Laser procedures had known complications such as damage to the lens, bleeding inside of the eye, and retinal detachment no matter how good the surgeon was. He explained the data from Oklahoma and Kentucky was bad, as neither of those states had reporting requirements for optometrists to report complications, nor was there a procedure for them to do so. There was no way to report those requirements, so if there was a medical complication, it did not go to the Board of Medicine.

Dr. Cody Jones testified in support of **S 1052**. He stated in August of 2020, the Department of Veteran Affairs (VA) removed restrictive language that denied veterans access to laser eye procedures provided by doctors of VA facilities. In September of 2022, the VA dropped additional language that prevented veterans from access to community care doctors of optometry for invasive eye care procedures. The language previously allowed this care only to be provided by an ophthalmologist. Now it allowed these procedures to be provided by optometrists and ophthalmologist based on that state's licensure requirements. The proposed changes to Idaho Statute would allow Idaho optometrists to render all the services that they were trained and educated to perform.

- DISCUSSION:** **Senator Wintrow** asked if federal law had approved to provide those procedures to the VA, and if Idaho was waiting to align with federal law. **Dr. Jones** answered that 95 percent of VA facilities had an optometrist in the United States, and eye care services were the third most requested service next to mental health and primary care.
- TESTIMONY:** **Dr. James Earl** testified in opposition of **S 1052**. He informed the Committee about surgical decision making, and how that was developed during residency surgical training. He believed there was no substitute for residency surgical training, as there was a big difference between learning about a surgical procedures and performing them. Currently, to perform eye surgeries in Idaho, a surgeon must complete surgical residency. Residency came after four years of medical school and an additional year of internship. There were many variances that required precaution, and adjustments that must be made to the technique. He suggested the bill was a shortcut for optometrists that allowed them to perform surgery without completing surgical training.
- DISCUSSION:** **Senator Wintrow** asked if the list of surgeries performed by optometrists was semantics. **Dr. Earl** stated he had not seen that list.
- TESTIMONY:** **Dr. Lauren Huber** testified in support of **S 1052**. She stated that therapeutic laser procedures were safe in the hands of optometrists, and had performed those procedures in other states since 1990. This was not new technology to that field.
- Senator Wintrow** asked for clarification regarding optometrist training and qualification for using laser procedures. **Dr. Huber** replied there were two optometric schools within the United States where therapeutic laser procedures were performed. Optometric students had ample opportunity to attend rotations from site to site that allowed students to practice those surgical procedures on patients.
- Dr. Caroline Vargason** testified in opposition of **S 1052**. She explained as a board certified ophthalmologist, 17,000 hours of clinical and surgical training was required to learn those skills, and an additional 8,000 hours of specialized training on tissue around the eyes in ocular facial plastic surgery still must be obtained. This training was highly regulated by a national council, and she believed those standards were set at a national level for patient safety.
- Dr. Aaron Warner** testified in support of **S 1052**. He stated the procedures in question were safe, as malpractice insurance rates have not gone up over the years since the introduction of the laser procedures.
- TESTIMONY:** **Jason Kreizenbeck**, contract lobbyist, testified in opposition of **S 1052**. He stated the Idaho Society of Ophthalmology and the Optometric Association were negotiating a piece of legislation. The stopping point was they could not come to an agreement on the level of training, residency programs, and how those practices would be put into effect. The version of the bill Mr. Giles had presented to them was not the same bill as the one before the Committee today.
- DISCUSSION:** **Senator Bjerke** asked if the changes made were impassable to ophthalmologists. **Mr. Kreizenbeck** replied the bill presented today was a very different version than the one presented in 2020. The bill still did not fix the core issue the Idaho Society of Ophthalmology had with the bill, as the training was insufficient to operate those lasers in a manner that was safe for Idaho patients.
- TESTIMONY IN SUPPORT:** Brian McNeel, Jeffery Collins, Jerald White, Alexandra Ruiz, Jacob Watson, Abby Watson, James Bewley, Lisa White, Doug Adams, and Ana Ferrer also testified in support of **S 1052**.
- TESTIMONY IN OPPOSITION:** Nathan Welch, Jack Pitt, Chad Jackson, and Darryl Moffet also testified in opposition of **S 1052**.

MOTION: **Senator Harris** moved to send **S 1052** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion passed by **voice vote**. **Senator Taylor** asked to be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman VanOrden** adjourned the meeting at 5:29 p.m.

Senator VanOrden
Chair

Michelle Tierney
Secretary