

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, March 16, 2023

TIME: 2:00 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senator Lee

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 Senate Health and Welfare Committee (Committee) to order at 2:00 p.m.

MINUTES APPROVAL: **Senator Harris** moved to approve the Minutes of January 25, 2023. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Bjerke** moved to approve the Minutes of February 7, 2023. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Taylor** moved to approve the Minutes of February 8, 2023. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Taylor** moved to approve the Minutes of February 9, 2023. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

Senator VanOrden announced the remaining Minutes for approval would be taken up at later date.

H 193

Health - Amends existing law to clarify provisions regarding essential caregivers and to require health care facilities to establish policies regarding essential caregivers. **Representative Young** invited Senator Bjerke to open the presentation. **Senator Bjerke**. He stated the inspiration for the bill was based on numerous concerns from constituents over their experiences with hospital visitation during the COVID-19 pandemic. The bill would modify the existing Essential Caregivers Act passed during the last Legislative Session. Passing this bill would ensure that a patient's rights to visitation were protected and it would prepare the State for any future health crisis.

Representative Young explained the bill clarified that an essential caregiver had the right to visit a patient in-person. A patient could have more than one essential caregiver and the medical facility could not limit how many essential caregivers a person had, however, a medical facility could limit the amount of essential caregivers a patient could see at one time.

DISCUSSION: **Senator Harris** questioned how those facilities were to train staff in such a short period of time. **Representative Young** indicated health care facilities already knew what was expected of the process of designating an essential caregiver. **Senator Harris** asked about the new language and expressed confusion on how it could be considered a new statute. **Representative Young** remarked it was new language but the requirement to allow patients to designate essential caregivers was existing.

Senator Wintrow asked why it was necessary to redefine an essential caregiver rather than creating a bill that protected visitors from being denied. **Representative Young** answered there was not any statute regarding this issue.

Senator Taylor voiced his concern over the bill's narrow definition of essential caregiver and asked why it was necessary. **Representative Young** commented the modification of the definition of an essential caregiver was done in a way that better aligned with the intent of the bill.

Senator Wintrow asked for clarification on the restrictions a health care facility could place on essential caregivers. **Representative Young** stated that a health care facility could not limit the number of essential caregivers a patient had, but could restrict how many essential caregivers could see a patient at one time.

Senator Bjerke asked if the term "private action" replaced more strict statute language as part of a compromise. **Representative Young** did not believe that was the case.

TESTIMONY: **Victoria Horn** testified in opposition to **H 193**. She stated she was concerned with certified family homes being included in the language of the bill and preferred to see it removed. She claimed the addition of certified family homes into the bill placed further restrictions on their policies and procedures. Those facilities were already bound by other regulations regarding patient visitation in Idaho Code. She pointed out certified family homes were fundamentally different than other health care facilities and did not need to be placed under the same requirements as other facilities.

DISCUSSION: **Senator Wintrow** asked Ms. Horn for confirmation on whether certified family homes and other similar care facilities were included under the requirements of the bill. **Ms. Horn** confirmed that was the case. **Senator Bjerke** asked what the scenarios would be if a certified family home denied a patient's visitor. **Ms. Horn** explained certified family homes were already bound to allow visitation under most circumstances unless they posed a danger to the patient. **Senator Bjerke** asked if the bill would place more restrictions on certified family homes. **Ms. Horn** believed that was the case.

Chairman VanOrden called Toni Lawson, Idaho Hospital Association (IHA), up to answer any questions the Committee had.

Senator Harris asked Ms. Lawson for her opinion on the staff training requirement and if hospitals could train their staff in time if the bill became law. **Ms. Lawson** stated hospitals would be in an immediate violation of compliance if the bill were signed into law the way it was currently written. **Senator Harris** asked what would happen if a hospital were in violation. **Ms. Lawson** explained if a hospital were in violation of this provision, the licensure could be impacted.

Senator Harris asked how long she thought it would take for hospitals to be in compliance with that kind of requirement. **Ms. Lawson** stated the IHA would prefer to have this bill set July 1, 2023 as the compliance date to give hospitals time to train staff. She emphasized to the Committee that hospital procedures could not change instantaneously and hospitals needed more time to ensure they

were going to be in compliance with the law.

Senator Bjerke asked how quickly hospitals could comply with the statute when the original Essential Caregivers Act was enacted the prior year. **Ms. Lawson** was unsure exactly how quickly each hospital came into compliance of that law.

Senator Wintrow asked what the process was for a patient if they thought they were a visitor. **Ms. Lawson** answered every hospital had a grievance process for complaints if a patient believed their rights were violated.

Senator Bjerke pointed out that during the COVID-19 pandemic some visitors did not have enough time to file complaints and seek administrative relief before their loved one passed away. He asked how hospitals would deal with those kinds of situations. **Ms. Lawson** observed during the COVID-19 pandemic hospitals were bound by the federal government to institute strict visitation policies and violation of these policies could result in staff losing their license. She mentioned that hospitals had learned a lot about these policies and procedures during the pandemic and would handle the situation differently now.

Senator Bjerke asked if this bill could help hospitals in their relationship with the Centers for Medicaid and Medicare Services (CMS). **Ms. Lawson** replied that while the intent of the bill was to help hospitals, it puts hospitals in the middle of two different sets of rules and expectations between the State and CMS.

Senator Harris asked if there were any amendments that could be made to the bill to help Idaho hospitals. **Ms. Lawson** explained that the main sections of the bill that posed a problem for hospitals was the emergency clause of enactment, as there were sections of the bill that violated CMS rules.

MOTION:

Senator Harris moved to send **H 193** to the 14th Order of Business for possible amendment. **Senator Wintrow** seconded the motion.

SUBSTITUTE MOTION:

Senator Bjerke moved to send **H 193** to the floor with a **do pass** recommendation. **Senator Zuiderveld** seconded the motion. The motion failed by **voice vote**.

FAILED SUBSTITUTE MOTION AND VOTE ON ORIGINAL MOTION:

Chairman VanOrden said the original motion is now before the Committee. The motion to send **H 193** to the floor for possible amendment was carried by **voice vote**.

H 244

Health - Amends existing law to provide in-person visitation rights for residents in certain facilities and to provide that visitation shall not be precluded based on vaccination status. **Representative Young** detailed the provisions of the bill and how it would affect patient visitation. She explained the bill added new language to Idaho Code which stated a facility could not require precautions for visitors that were more stringent than what was required by the staff of the facility. She stated this established parity and guaranteed fairness for visitors and staff. The bill established that no individual would be denied visitation of a patient on the preclusion of vaccination status. She mentioned patients had the right to deny visits from individuals who were not vaccinated, but the healthcare facility itself could not make that determination.

DISCUSSION:

Senator Wintrow asked if the bill would require potential visitors to be vaccinated for the same diseases that were required of staff in order to visit. **Representative Young** clarified that discrimination based upon vaccination status was prohibited, but that all other precautions that were required of staff was also required of visitors.

TESTIMONY: **Viki Purdy** testified in opposition of **H 244**. She stated it required visitors to take the same precautions as the staff of the healthcare facility. She believed it would add another barrier between the patient's family and other potential visitors. She expressed concern that public health facilities would be penalized if complaints were filed against them for failing to enforce this section of the bill.

MOTION: **Senator Bjerke** moved to send **H 244** to the floor with a **do pass** recommendation. **Senator Zuiderveld** seconded the motion. The motion passed by a **voice vote**.

H 215 **Insurance - Amends existing law to provide for enforcement of provisions applicable to pharmacy benefit managers. Representative Redman** explained this bill added additional amendments to a previous law regarding pharmacy benefit managers (PBM). These amendments would create an enforcement policy for this section of Idaho Code, and would entrust the authority of enforcement to the Department of Insurance.

MOTION: **Senator Harris** moved to send **H 215** to the floor with a **do pass** recommendation. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

H 291 **Fair Pharmacy Audits Act - Adds to existing law to implement the Fair Pharmacy Audits Act. Representative Redman** reported **H 291** established uniform and minimum standards and criteria for auditing pharmacy records on behalf of PBMs. He highlighted how the legislation was created to defend small business pharmacies in Idaho from overreach and unfair practices from PBMs.

Pam Eaton, Chief Executive Officer, Idaho Retailers Association, expanded on how PBMs audit pharmacies and how the current system created harm for local pharmacies. She mentioned there were no uniform standards and procedures on how the audit was performed. Pharmacies had no expectations on how each audit would proceed and no way to prepare for these audits. This bill established a uniform criteria and standard for those audits and specified charge backs could not be based on clerical or recordkeeping errors.

TESTIMONY: **Korey Kreider**, **Donald Smith**, **Tyler Higgins**, **Idaho State Pharmacy Association**, **Will Edwards**, and **Douglas Fuchs** all testified in favor of **H 291**. All of those who testified spoke to the flaws of the current audit system and how it had effected their particular business. They expressed their support for the proposed audit standards and indicated that this bill would benefit small, independent pharmacies the most.

MOTION: **Senator Wintrow** moved to send **H 291** to the floor with a **do pass** recommendation. **Senator Zuiderveld** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman VanOrden** adjourned the meeting at 3:29 p.m.

Senator VanOrden
Chair

Michelle Tierney
Secretary

Tyler Allen
Assistant Secretary