

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Thursday, February 28, 2019

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

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Senator Souza

**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 1:31 p.m.

**MINUTES APPROVAL:** **Chairman Patrick** announced that due to the absence of Senator Souza, the approval of the Minutes of February 21, 2019 would be heard at a later time.

**PASSED THE GAVEL:** Chairman Patrick passed the gavel to Vice Chairman Agenbroad.

**S 1068**

**Relating to Pharmacy Benefit Managers (PBMs).** **Chairman Patrick** reported that PBMs are third party administrators under contract by health plans, employers, and government entities to manage prescription drug programs for health plan recipients. PBMs decide which pharmacies are included in a prescription drug plan's network and how much the pharmacy will be paid for dispensing services. Idaho is one of five states that does not regulate or have any oversight over PBMs. This bill will require PBMs that operate in Idaho to register with the Idaho Department of Insurance (IDOI). **Chairman Patrick** explained that in the original version of the bill, pharmacists were given more flexibility in informing patients how they can pay less out-of-pocket for prescriptions. Today, PBMs prohibit pharmacies from discussing prescription cost options with their patients. Recently, legislation passed and was signed into law at the federal level prohibiting "gag clauses" on Medicare Part D and Advantage plans, but State legislation is still needed for all other insurance. Most states already have this type of law in effect. **Chairman Patrick** stated that lastly, the original bill included language that would save health plans money via reimbursement rates and deductibles when rebates, coupons, vouchers, discounts, and other direct payments were applied towards prescriptions. However, the original bill has been amended.

**Chairman Patrick** advised there is no fiscal impact to the General Fund; however, the changes to Idaho Code § 41-348 will ultimately have a positive fiscal impact on the General Fund, although the amount is unknown, since it is projected to potentially have a significant cost savings to the State employee health insurance program and Medicaid.

**Chairman Patrick** reported the original bill has been simplified and read the amendment. He said that on page 2 of the printed bill, lines 21 through 48 are deleted. On page 3, lines 1 through 20 are deleted; and line 21 deletes "3" and inserts: "2." He reported there was a correction to the title. On page 1, line 6 deletes "AMENDING SECTION 41-348, IDAHO CODE, TO REVISE PROVISIONS RE -"; and line 7 deletes ". . .GARDING PROHIBITED ACTS AND TO DEFINE TERMS;."

**Chairman Patrick** asked the Committee to have the bill sent to the 14th Order for possible amendment in an effort to provide more transparency.

**TESTIMONY:** **Tyler Higgins**, Pharmacist, Idaho State Board of Pharmacy Association, testified in support of the bill. He stated he may have to close his business because of PBMs. He said he believes in fair and free enterprise, but PBMs are greedy and want profit.

**DISCUSSION:** **Senator Guthrie** inquired if the amendments to this bill helped the pharmacies. **Mr. Higgins** remarked this was a step in the right direction.

**Mr. Higgins** and **Senator Lakey** discussed the negotiation of contracts with an insurance company group through a PBM, the amount a pharmacist is paid by a PBM, and what a pharmacist is required to charge a patient. They discussed yearly changes in contracts, the notion they are non-negotiable, and the overnight loss of business if the pharmacist does not agree with the contract.

**TESTIMONY:** **Doug Fuchs**, Pharmacist and co-owner of seven small pharmacies, testified in support of the bill. Because of the non-negotiable PBM contracts, he has had to sell some prescriptions under cost. He is paid \$55 below cost for an epi-pen, but wants his clients to have them in spite of the loss. He has no way of recovering his money. In his opinion, PBMs are taking money from him. He has lost 10 percent of the 37,000 filled prescriptions during the last month.

**DISCUSSION:** **Senator Martin** queried if the situation would be helped by this bill. **Mr. Fuchs** stated this was a good step, but wanted and needed a solution more quickly. He liked the idea that PBMs will be regulated by the IDOI. He remarked that three months ago he was paid \$25 for a prescription and is now receiving \$10. He affirmed PBMs should be regulated.

**Senator Guthrie** and **Vice Chairman Agenbroad** discussed PBMs with **Mr. Fuchs**. **Mr. Fuchs** reported he has been dealing with PBMs his entire career, with the last three years being the hardest. He has been dealing with Maximum Allowable Cost (MAC) fees, which are the upper limits that a PBM or prescription drug benefit plan will pay a pharmacy for generic and brand name drugs that have generic versions available (multi-source brands). He has also been dealing with Direct and Indirect Remuneration (DIR) fees, which involve what PBMs charge pharmacies to ensure the maximum allowable cost provides optimal care for patients, and meet certain benchmarks.

**TESTIMONY:** **Michael Mollson**, Managed Care Group Director, Albertsons, testified in support of the bill. He remarked he was responsible for negotiating with the PBMs for the Albertsons chain of stores. This legislation takes some steps to help. Currently, there is no oversight in Idaho for PBMs.

**Pam Eaton**, Idaho Retailers Association, testified in support of the bill. She emphasized this bill is a good first step which impacts all pharmacies. Today, pharmacies are struggling. Idaho is only one of a few states that does not have oversight over PBMs.

**DISCUSSION:** **Senator Guthrie** and **Ms. Eaton** discussed the history of PBMs, how oversight is needed, and the lack of transparency on the part of the PBMs. **Ms. Eaton** emphasized the PBMs are out of control and states are trying to get PBMs to conform.

**Senator Martin** queried if anyone could form a PBM and provide a cheaper service. **Ms. Eaton** responded anyone could open any kind of business, but in the PBM industry there are basically three companies who comprise the majority. There are no PBMs based in Idaho. It would take years to become established and make a PBM work.

**TESTIMONY:** **Sharon Brigner**, Registered Nurse (RN), representing Pharmaceutical Research and Manufacturers of America (PHRMA), testified in support of the bill. She explained money has been spent on research and development. She stated that originally PHRMA was in opposition to the bill until it was amended. PHRMA opposed section 2 relating to coupons. She said this bill was a good step forward and savings should be passed on to patients.

**DISCUSSION:** **Senator Lakey** inquired what other potential steps would be appropriate. **Ms. Brigner** reiterated this is a great step forward. One-third of the revenue of the manufacturer's money is going to PBMs, but should be passed on to the patient. If savings were passed down from the manufacturer's rebates to the patient at the pharmacy counter, they could achieve more than \$800 per year in savings with only a 1 percent increase in premiums. **Ms. Brigner** recommended looking for and exploring ways to save money for the patient instead of the other supply chain stakeholders who are already benefiting from rebates, which were intended to go toward access to medicines for patients.

**Senator Guthrie** remarked pharmacists testified today who were losing money. PBMs are not casting a good light. He inquired what PHRMA was doing to acclimate to a changing business model. **Ms. Brigner** clarified she is not representing PBMs and agreed they have to make some changes. She stated she believed in looking at passing savings on to the patient and the rebate structure has to be redone. Originally, PBMs were thought to help alleviate negotiations, but are now out of control. **Ms. Brigner** emphasized PBMs should work with all stakeholders.

**Chairman Patrick** asked Pam Eaton to testify again. He stated this bill does not do enough, but it is a beginning.

**TESTIMONY:** **Pam Eaton**, Idaho Retailers Association, remarked she learned that some pharmacists created a PBM in another state. They saved the pharmacies \$1.5 million in the first year. This can be done, but because there are three large PBMs, it may be next to impossible to accomplish and could take years.

**MOTION:** **Senator Guthrie** moved to send **S 1068** to the 14th Order of business for possible amendment. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Vice Chairman Agenbroad passed the gavel back to Chairman Patrick.

**MINUTES APPROVAL:** **Senator Martin** stated he had also read the Minutes of February 21, 2019 and found them in order. **Senator Martin** moved to approve the Minutes of February 21, 2019. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:25 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary