

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 22, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, and Jordan

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 Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:09 p.m.

APPROVAL OF MINUTES: **Senator Lee** moved to approve the Minutes of the February 9, 2017 meeting. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Souza moved to approve the Minutes of the February 14, 2017 meeting. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

H 38

Relating to Mental Health. Ross Edmunds, Administrator for the Division of Behavioral Health, Department of Health and Welfare (Department), introduced himself to the Committee. **Mr. Edmunds** explained the concept of a mental health directive (MHD). A person of sound mind prepares in advance what he or she would like to have for care and treatment should the person not be able to make decisions for him or herself. The family can use the MHD to make decisions for the person.

Mr. Edmunds stated there are two different ways someone can be committed to the Department. The first is when a person is at risk of life-threatening harm to himself or someone else, or is gravely disabled, the person can be civilly committed to the Department through a court process. The second type is a restoration to competency, when a court deems a person charged with a crime is not competent to stand trial and cannot contribute meaningfully to his or her own defense. After being committed to the Department, the person is sent to an institution where competency is restored so the person can go back and stand trial for the crime.

Mr. Edmunds informed the Committee **H 38** has to do with the second type of commitment and amends Idaho Code § 18-212. When a person is committed to the Department for restoration of competency, the Department becomes the legal guardian for the person and has a legal obligation to restore the person to competency. If the person has a MHD that says the person doesn't want to take a certain type of medication, yet that is the medication that would restore the person to competency, the bill would allow the Department to ignore the MHD to provide the necessary treatment. Currently, the law allows the Department to act contrary to a MHD in a civil commitment, but not for a restoration to competency commitment. The bill would allow the Department to proceed in the same manner for both types of commitment.

Mr. Edmunds explained the Department has determined the bill has no fiscal impact. There will be no increase in the population served, but the bill simply allows the Department to meet its obligations under the law as it exists today.

Senator Martin asked if a person has committed a crime and is awaiting trial in a facility, could the person go before a judge to get a court order to avoid treatment. **Mr. Edmunds** answered the bill would allow the Department to act contrary to an advance MHD. When a person comes to an institution, the person can refuse medication, even with a MHD in place. The only way the Department can require medication is through a commitment order from the court that includes a medication override. **Senator Martin** asked for clarification if the Department would be acting in accordance with a court order. **Mr. Edmunds** replied that is correct.

MOTION: **Senator Lee** moved to send **H 38** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Foreman** inquired whether the bill would allow the Department to override the MHD solely to prosecute the person, or if there is a medical reason or concern for disregarding the MHD. **Mr. Edmunds** responded there are two different issues. The first is a court order override of a person's refusal to take medications. The second is the MHD. The bill gives the Department the ability to provide necessary treatment without regard to the MHD because the person has been committed to the Department. If a person refuses medication, then the Department must have a direct court order related to the specific commitment that contains a medication override. **Senator Foreman** further inquired whether the Department can proceed with treatment contrary to a MHD without a court order for the purpose of prosecuting the person. **Mr. Edmunds** explained there are two different issues. The first is a person's refusal to take medication at the time he or she is committed. The second is an advance MHD. The bill would allow the Department to ignore the advance MHD. If a person refuses medication upon commitment, the Department must have a court order to require medication. The purpose of the medication could be to bring the person to a level of competency that would allow the person to stand trial for a crime. The Department's role is not to assist with prosecution, but to restore competency to allow the person to meaningfully contribute to his or her own defense to have a fair trial. **Senator Foreman** asked if the Department can override the MHD without a court order if the person is committed and facing trial. **Mr. Edmunds** answered today, the Department cannot override the MHD without a court order. The bill would give the Department the ability to act contrary to the MHD without a direct court order based on the fact the person is committed to the Department, and the Department is legally responsible to restore them to competency. If at the time of treatment, the person refuses any treatment, a court order would be necessary to provide treatment.

There being no more discussion, **Chairman Heider** called for the vote on the original motion. The motion carried by **voice vote**. **Senator Foreman** requested he be recorded as voting nay.

H 7 **Relating to Massage Therapists.** **Mitch Toryanski**, Legal Counsel for the Idaho Bureau of Occupational Licenses (Bureau), introduced himself to present **H 7** on behalf of the Idaho Board of Massage Therapy (BMT). **Mr. Toryanski** introduced Linda Chatburn, a licensed massage therapist and member of the BMT.

Mr. Toryanski stated the bill gives the BMT the ability to review and approve the curriculum of massage therapy schools registered with the Board of Education (BOE). Students are graduating from some registered massage therapy schools that do not meet the BMT's curriculum standards. BOE rules say the education programs of proprietary schools are supposed to prepare students for employment. Massage therapy schools are required to follow applicable trade or curriculum standards set by the BMT. After enrolling in a massage therapy program, paying tuition, and completing the course, some students find they are not qualified to be licensed.

Mr. Toryanski explained the BOE has one staff person who processes dozens of registration requests from many different schools in a wide variety of fields. The BOE staff person cannot review all curriculum offered by the schools and does not have massage therapy expertise. The BMT has agreed to review and approve the curriculum of the applicant schools for the BOE. It will result in more work for the BMT, but students who enroll in the registered proprietary schools will know prior to enrollment that their training will allow them to be licensed and go to work. The curriculum review will be accomplished without the BOE having to hire more people. The bill is an example of two state agencies working together to accomplish a goal with existing resources.

Mr. Toryanski informed the Committee the bill will have no impact on the General Fund or the Bureau's dedicated fund because the BMT will perform the curriculum reviews during regularly-scheduled meetings. The bill provides a limited government approach to a consumer protection issue.

Vice Chairman Souza asked how long the BOE has been involved in reviewing curricula for schools other than the public school system. **Mr. Toryanski** answered he did not know, but the Executive Director of the BOE is present.

Matt Freeman, Executive Director for the BOE, introduced himself to respond to the question. **Mr. Freeman** explained the Legislature gave the BOE authority to register proprietary schools in 2009.

Vice Chairman Souza inquired how many schools the BOE reviews. **Mr. Freeman** estimated 36 proprietary schools, and the BOE also registers private post-secondary institutions that offer degrees.

Chairman Heider asked once the BOE reviews a particular school's curriculum, if the school is accepted going forward or if a new review is required every time the school registers. **Mr. Freeman** replied proprietary schools register on an annual basis. If the curricula has not significantly changed, it is a fairly quick registration process. **Chairman Heider** asked once the BOE agrees a school has an appropriate curriculum if subsequent graduates will be accepted from that school. **Mr. Freeman** responded there are a number of requirements for registration in addition to reviewing the curricula. Once the schools are registered, they are lawfully allowed to offer a program in Idaho. The BOE registers the schools, and the BMT licenses the massage therapists.

Senator Lee asked for clarification that when schools register with the BOE, it is not a BOE endorsement of the curriculum or any statement about the quality of the school. **Mr. Freeman** replied that is correct. It is simply a registration and there is no representation about quality or employability.

Senator Harris inquired who sets the curriculum standards. **Mr. Freeman** answered for the BMT, educational content standards are established in rule. This includes the coursework, content, and hours required for massage therapists.

Senator Lee wondered if massage therapy schools are not currently required to register as private proprietary schools. **Mr. Freeman** answered that is incorrect. Massage therapy schools are proprietary schools required to register with the BOE, and BOE rules require that a proprietary school's course of study follow applicable trade board curriculum standards. The curriculum standards for massage therapists are contained in administrative rule for the BMT. The BOE has a staff of one person who does not have the expertise to determine whether or not a massage therapy school's curriculum meets the BMT requirements.

Senator Anthon stated he is struggling with the bill and asked if his reading of Idaho Code is correct that the BMT is only authorized to determine the qualifications of an applicant and whether someone should be licensed. **Mr. Freeman** deferred the question to Mr. Toryanski.

Senator Anthon said he sees a difference between licensure and determining curriculum. Perhaps the schools should be allowed to decide their own curricula, and students will either pass or fail the licensing exam. **Mr. Toryanski** answered it is reasonable for a citizen who wants to go to massage therapy training to assume that if a school is registered by the State, then it must meet the State's standards. The BOE is supposed to ensure the curriculum is up to trade board standards, but the BOE does not have the manpower or expertise to do it. The BMT has the expertise and can do the review. If a school approached the BOE about registration, the registration application would include the curriculum. The BOE would then give the curriculum to the BMT and ask that it be reviewed to determine if it meets BMT standards. The BMT would look at the classes and ensure sufficient course hours were devoted to the required topics.

Senator Lee asked if the BMT only matches the curriculum to the massage therapy standards. She is concerned about what would happen if the BMT kept schools out of business due to other marketplace concerns. **Mr. Toryanski** replied the BMT exists for one reason only and that is to keep the public safe. If the BMT is acting in a way to minimize competition, then the BMT is acting against the instructions of the Governor and against their charge in statute. The BMT already reviews all the curriculum, but it is done at the time individual licensure applicants come forward to submit their paperwork. The BMT must review everyone's curriculum individually to ensure it meets the BMT standards. If the BMT is authorized to review the curriculum for a school registration, then the BMT would know applicants qualify for licensure based on graduation from that school. It could serve to streamline the licensing process for the BMT.

Chairman Heider commented the duties of a board generally are not to approve curriculum but to approve the people for licensure based on their education. For the BMT to approve the curriculum of 200 educational programs seems a bit onerous. **Mr. Toryanski** agreed it is true the BMT is concerned with individual licensure. The BMT is a volunteer board and wants regulation of schools to stay with the BOE. The BMT recognizes there is not enough manpower at the BOE to review the curriculum and has offered to take on the task.

Senator Agenbroad asked whether massage therapy schools are eligible to receive any kind of student aid, and if this legislation would change that. **Mr. Toryanski** responded schools receive funding depending on how they operate, but all massage therapy schools are already supposed to meet the minimum standard. There would be no effect on funding as a result of this bill. **Senator Agenbroad** said he is more interested in the ability of the student to obtain a student loan to attend the schools. **Mr. Toryanski** answered the BMT is focused only on ensuring the public is safe, and he does not know how to answer that question.

Senator Harris inquired whether any other boards at the Bureau approve curricula in this manner. **Mr. Toryanski** replied the Board of Cosmetology regulates cosmetology schools, and the BMT would be the second board at the Bureau with this authority.

MOTION: **Senator Martin** moved to send **H 7** to the floor with a **do pass** recommendation. **Vice Chairman Souza** seconded the motion.

DISCUSSION: **Senator Lee** said she still has some questions and is unsure of her support for the bill.

Senator Anthon stated he will oppose the motion. Idaho Code requires applicants to pass a nationally-recognized competency exam. He commented the schools should teach what they want to teach, and the success of the students will be recognized by whether or not they pass the exam. For example, the University of Idaho College of Law is an excellent school, but only 60 percent of his graduating class passed the Idaho State Bar Exam. That result is due to other factors and not because a regulatory agency did not approve the curriculum.

There being no more discussion, **Chairman Heider** called for the vote on the original motion. The motion carried by **voice vote**. **Senators Lee, Anthon, Agenbroad, and Harris** requested they be recorded as voting nay.

H 11

Relating to Optometrists. Mr. Toryanski was recognized to remind the Committee that **H 11** would require all optometrists to become certified to use pharmaceutical agents for diagnostic and therapeutic purposes. If the Committee is willing to reconsider the bill, the Board of Optometry would appreciate having it sent to the Fourteenth Order for amendment.

Chairman Heider remarked a proposed amendment would extend the implementation date of the bill by two years.

Senator Lee said she was hopeful current licensed optometrists could be grandfathered so the requirement would only apply to new licensees. It would allow a few optometrists at the end of their careers to continue their current practices.

Vice Chairman Souza remarked that grandfathering would be accomplished by adding more years until the effective date of the deadline, thereby accomplishing the goal of giving these few practitioners time to finish out their careers.

Senator Foreman commented he too was hoping the amendments would allow all current practitioners to continue practicing until their normal retirement and not just extend the deadline for a couple of years. The proposed amendment is not what he wants to see.

Senator Jordan asked whether others could submit amendments if the bill is sent to the Fourteenth Order. **Chairman Heider** responded the bill would be sent with the proposed amendments. **Senator Jordan** asked whether a different amendment could be submitted. **Chairman Heider** answered yes.

MOTION: **Vice Chairman Souza** moved to reconsider **H 11**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

MOTION: **Vice Chairman Souza** moved to send **H 11** to the Fourteenth Order for possible amendment. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 4:00 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary