MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE:	Tuesday, February 26, 2019
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Patrick, Vice Chairman Agenbroad, Senators Martin, Lakey, Guthrie, Thayn, Souza, Ward-Engelking, and Burgoyne
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 Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m. **Chairman Patrick** remarked that **H 71** was being moved up on the agenda, due to a prior obligation on the part of Director Cameron.
MINUTES APPROVAL:	**Senator Thayn** moved to approve the Minutes of February 19, 2019. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.
H 71	**Relating to Insurance - Accreditation National Association of Insurance Commissioners (NAIC)**. **Dean Cameron**, Director, Idaho Department of Insurance (IDOI), affirmed this legislation is based on 2014 amendments to the NAIC System Regulatory Act Number 440. These model law amendments will be required for accreditation of the IDOI by the NAIC. **Mr. Cameron** noted accreditation is important to maintain consistent and fair regulation of insurers. Accreditation is also necessary to retain carriers domiciled in Idaho, thereby benefitting consumers. The goal of this legislation is to provide authority to the Director of the IDOI to act as a group-wide supervisor for an internationally active insurance group. **Mr. Cameron** related it is helpful to both insurance companies and their regulator to have one jurisdiction assess the enterprise-wide risks and coordinate group-wide supervision activities for insurance companies or insurance holding company groups. Acquisitions or other changes in a state's domestic insurance industry can occur quickly and change the state's role in overseeing a domestic insurer or their role within the holding company group. **Mr. Cameron** reported there is no fiscal impact to the General Fund or any other state fund or expenditure inasmuch as the provisions of this legislation can be reviewed and monitored with the IDOI's current and requested appropriation. Implementation of this legislation will help ensure financial security of any domiciled insurance companies that are members of an internationally active insurance group, thus preventing utilization of the State guaranty funds and a commensurate reduction in premium taxes.

DISCUSSION: **Senator Burgoyne** referred to page 2, line 2 of the bill "to engage in conducting and coordinating group-wide supervision activities" and queried what this meant. **Director Cameron** remarked this is all defined through the NAIC. He pointed out that page 4, subsection 5 outlines some of the duties that would be required of the IDOI Director. **Senator Burgoyne** inquired what the level of supervision was with respect to the people in Idaho. **Director Cameron** explained the supervision would be a linear progression and that did not mean that the IDOI Director would typically run the company.

MOTION: **Senator Guthrie** moved to send **H 71** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

H 5 **Relating to Occupational Licensing**. **Maurie Ellsworth**, General Counsel, Idaho Bureau of Occupational Licenses (IBOL), reported the Idaho Board of Chiropractic Physicians (IBCP) is proposing legislation to remove the IBCP's obligation to provide a peer review process intended to review the appropriateness, quality, utilization, and costs of chiropractic services. The IBCP Board has determined that this process is unnecessary and wishes to eliminate this regulation.

Mr. Ellsworth stated there is no impact to the General Fund or the IBOL's dedicated fund because the proposed legislation will not alter the number of IBOL meetings held each year or require more services be provided to the IBCP. The IBCP should save approximately $1,000 annually as it will no longer be required to provide peer reviews.

DISCUSSION: **Senator Souza** expressed a concern that if the peer review process was eliminated, whether the IBOL would be able to provide oversight and awareness. **Mr. Ellsworth** stated it was not a function of the IBOL. If there is a dispute between a chiropractor and a patient, that could be litigated in court. **Mr. Ellsworth** explained the IBOL review process.

Senator Martin inquired how many times in the past few years violations have been heard by the Peer Review Board (PRB). **Mr. Ellsworth** indicated the PRB has been used only four or five times. He explained the process and reported any member of the public can file a complaint. That complaint is initially reviewed, sent to investigators who talk to the complainant and witnesses, and a report is generated. The IBOL uses individuals who are members of the profession to review the facts and if there is evidence of a violation, more investigation can be done. Ultimately, a case can be sent to a prosecutor.

Senator Burgoyne inquired as to the standard of care required of chiropractors. **Mr. Ellsworth** remarked the Chiropractic Practice Act (Attachment 1) defines the scope of practice. There is an ethical code and standards. Some of the standards need to be updated.

MOTION: **Senator Martin** moved to send **H 5** to the floor with a **do pass** recommendation. **Vice Chairman Agenbroad** seconded the motion. **Senator Burgoyne** remarked he would be voting aye, but he reserved the right to examine this bill and possibly change his vote on the floor of the Senate. The motion carried by **voice vote**.

H 6	**Relating to Social Work Licensing**. **Rob McQuade**, Legal Counsel, Idaho Bureau of Occupational Licenses (IBOL), stated The Idaho Board of Social Work Examiners (IBSWE) is proposing legislation to change the licensee designation that Idaho uses for the initial level of licensure from a Licensed Social Worker (LSW) to the uniform, nationwide designation of Licensed Bachelor Social Worker (LBSW). This change will increase portability of licensure between Idaho and other states. **Mr. McQuade** indicated there is no impact to the General Fund or the IBOL's dedicated fund because the proposed legislation will not alter the number of IBOL meetings held each year or require more services be provided to the IBSWE.
MOTION:	**Senator Souza** moved to send **H 6** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.
PASSED THE GAVEL:	Chairman Patrick passed the gavel to Vice Chairman Agenbroad.
RS 26901	**Unanimous Consent Request Relating to Rule Rejection - Idaho Industrial Commission (IIC) - Docket No. 17-0211-1802, Section 051., Subsection 08.e.ii**. **Vice Chairman Agenbroad** reported this Routing Slip (RS) rejects a certain administrative rule of the IIC, relating to the Workers' Compensation Law - Security for Compensation - Self-Insured Employers. There is no fiscal impact because this section of the rule does not take effect.
UNANIMOUS REQUEST:	**Vice Chairman Agenbroad** asked for unanimous consent to send **RS 26901** to a privileged committee for a print hearing. There were no objections.
RS 26902	**Unanimous Consent Request Relating to Rule Rejection - Idaho Industrial Commission (IIC) - Docket No. 17-0210-1802, Section 051., Subsection 08.e.ii. Vice Chairman Agenbroad** reported this Routing Slip (RS) rejects a certain administrative rule of the IIC, relating to the Workers' Compensation Law - Security for Compensation - Insurance Carriers. There is no fiscal impact because this section of the rule does not take effect.
UNANIMOUS REQUEST:	**Vice Chairman Agenbroad** asked for unanimous consent to send **RS 26902** to a privileged committee for a print hearing. There were no objections.
RS 26903	**Unanimous Consent Request Relating to Rule Rejection - Plumbing Code, Docket No. 07-0206-1702, Section 11, New Subsection 35**. **Vice Chairman Agenbroad** reported this Routing Slip (RS) rejects a certain rule of the Idaho Division of Building Safety (IDBS) concerning the Idaho State Plumbing Code. There is no fiscal impact because this section of the rule does not take effect.
UNANIMOUS REQUEST:	**Vice Chairman Agenbroad** asked for unanimous consent to send **RS 26903** to a privileged committee for a print hearing. There were no objections.
PASSED THE GAVEL:	Vice Chairman Agenbroad passed the gavel to Chairman Patrick.
RECESS:	**Chairman Patrick** called a recess at 2:04 p.m. in anticipation of the arrival of the Senate Health and Welfare Committee members.
RECONVENED:	**Chairman Patrick** reconvened the meeting at 2:31 p.m.

JOINT PRESENTATION: **Relating to Pharmacy Benefit Managers - With the Senate Health and Welfare Committee (SHWC). Colleen Becker**, National Conference of State Legislators (NCSL), provided an overview of Pharmacy Costs & Pharmacy Benefit Managers (PBMs) (Attachment 2) to the Committee and the SHWC. She referred to the flow chart, Pharmacy Supply Chain, and outlined how the drug distribution model worked. **Ms. Becker** defined PBMs and pointed out there are three companies who control most of the market; namely, Express Scripts; Convenience, Value, and Service (CVS) Caremark; and Optimum.

Ms. Becker referred to the slide on spread pricing, which included the average spread by quarter and by drug type for the State of Ohio. She pointed out when Ohio conducted an audit of Medicaid-managed care providers, they discovered that PBMs billed them $223 million more than what the PBMs paid in pharmacy costs. On average, PBMs charged a 9 percent spread across all drugs. Additionally, the auditors found that generic drug prescriptions were charged on average a 31 percent spread. Since the findings were released, Ohio's Medicaid program required their managed-care plans to renegotiate the PBM contracts and to move from a spread pricing drug purchasing model to a pass-through mode. A pass-through structure requires a PBM to charge a managed care plan the exact amount the PBM pays for prescriptions and dispensing fees.

DISCUSSION: **Senator Guthrie** remarked if a customer asks a pharmacist if there is a generic drug, one less expensive, or a better drug, would the pharmacist be obligated to answer. **Ms. Becker** stated if a patient does not ask, the pharmacist does not have to supply that information.

PRESENTATION: **Ms. Becker** pointed out discounts and coupons for manufacturers are used by consumers to mitigate the cost of their prescription co-payments. Sometimes this includes getting the drugs that are at low or no-cost. Often these coupons are for medicines that are considered specialty or brand name, although there is no official agreed upon definition. Usually, these prescription drugs cost at least $600 or more per patient per month. Many times they are injectable or infused in a vein and biologics are also included. This includes treatments for rheumatoid arthritis, cancer, and multiple sclerosis.

Ms. Becker reported coupon patient advocates and manufacturers often say that these coupons help increase access to innovative new treatments that patients would not otherwise be able to afford by reducing the patient's out-of-pocket costs. PBMs and insurers, however, say that coupons sidestep benefit designs such as tiered formularies to drive prescription volume toward other products, like generic medicines with lower cost. **Ms. Becker** explained the issue of co-pay coupons is not new to lawmakers, but it has gained recent attention by federal and state policymakers. She noted that Medicare and Medicaid, which cover over 80 million beneficiaries, consider coupons to be kickbacks and completely ban their use. PBMs use formulary tier placement as leverage to negotiate with manufacturers for discounts and rebates. This drives demand towards drugs with low co-payments. Demand falls for drugs placed on tiers with high co-payments. The top 200 highest expenditure drugs were examined and it was found that 90 of these brand drugs had coupons. Of those, only 21 percent had direct generic competition, while another 12 percent had no therapeutically equivalent substitute.

Ms. Becker pointed out that when a patient goes to a pharmacy to fill a prescription and uses a co-pay coupon, many times they assume the value of the coupon counts towards their deductible or out-of-pocket costs. Some insurers and PBMs have initiated a co-pay accumulator program, which does not count the coupon's value towards those costs. Only true out-of-pocket payments count.

Ms. Becker cited a few examples. In a survey by Kaiser Family Foundation, they found that employees enrolled in high deductible plans increased from 4 percent in 2006 to 28 percent in 2017. Additionally, 37 percent of covered workers and small firms, and 15 percent of covered workers and large firms, are in a plan with a deductible of at least $2,000. She cited how some states have adopted a variety of approaches. The prohibition of gag clauses remains a top concern for policymakers. States are looking for new ways of purchasing drugs, either through importation, value-based purchasing, multi-state co-op, interagency pooling, or other price negotiations - either through their Medicaid programs or through other state agencies.

Ms. Becker directed the Committee to the Prescription Drug Resource Center and other reports available at the NCSL prescription drug database.

DISCUSSION: **Senator Souza** queried how a state would do an audit on pricing spread. **Ms. Becker** stated an internal audit could be done .
Senator Lakey and **Ms. Becker** discussed pricing transparency and legislation in other states relating to maximum allowable costs. **Ms. Becker** disclosed that much of the costs are proprietary in nature, which makes it difficult to find out the real cost. **Senator Lakey** remarked that some of the pricing sounded like transparency and some seemed to be price control. **Ms. Becker** remarked she did not think the language of price control is used. Legislation in several states was trying to shed light on the actual costs.

Senator Thayn stated he was interested in the scope of some of the topics besides PBMs. He queried if the reduction of pharmaceutical costs was beyond the scope of what other states are doing to reduce the overall cost of health care wellness plans. **Ms. Becker** remarked the NCLS Health Department has 15 employees who cover health from A to Z. The Pharmaceutical Department covers costs. They do not cover opioid legislation or over-the-counter medications.

Vice Chairman Agenbroad and **Ms. Becker** discussed federal regulations relating to gag orders and transparency issues. They discussed the idea that there is probably not one single entity or one individual or group that can really uncover all aspects of the pharmacy supply chain because there are so many moving parts and levers.

Senator Souza stated she was not clear on the function of PBMs since some are smaller and some larger. **Senator Souza** and **Ms. Becker** discussed negotiating a true price, if it is different from one pharmacy chain or group, and that negotiations are proprietary. **Ms. Becker** gave a brief overview of how PBMs originated and explained that at the beginning, PBMs administered pharmacy claims and benefits for plans.

Senator Burgoyne inquired if there is any evidence that PBMs save patients money. **Ms. Becker** remarked there have been many studies in the affirmative and in the negative, but until negotiations are transparent, it is hard to say what is true evidence.

Senator Guthrie inquired if there is a delivery model that is not utilizing PBMs. **Ms. Becker** cited that West Virginia did away with PBMs and is currently processing all of their own pharmacy claims. They have already estimated they have saved approximately $33 million per year, which is between 2 to

4 percent of their State Medicaid budget for prescription drugs. **Senator Guthrie** queried if the premise was simply the power of negotiations or volume purchasing. **Ms. Becker** noted the three PBMs have over 70 percent of the market share, which gives them more ability to leverage prices.

Senator Burgoyne remarked he never understood the premise of PBMs nor the leverage issue. He asked for an explanation of how a PBM has more leverage than Walgreens and CVS. **Ms. Becker** related that Walgreens has a much smaller part of the market than the larger companies and, therefore, does not have as much leverage.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 3:09 p.m.

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Senator Patrick	Linda Kambeitz
Chair	Secretary