

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 22, 2016
TIME: 3:00 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Martin, Lee, Harris, Schmidt 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 3:07 p.m. **Chairman Heider** announced that the Committee secretary will be away for three days and an assistant will take the minutes.
PRESENTATION: U.S. Supreme Court Case Relating to Regulatory Boards. Mitchell E. Toryanski, Legal Counsel for the Idaho Bureau of Occupational Licenses, made this presentation before the Committee.

Mr. Toryanski discussed the U.S. Supreme Court case of *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, which was decided by the Court on February 25, 2015 (see attachment 1). He explained that the purpose of his presentation was to provide the Committee with information about the Court's opinion, which increases the legal exposure of Idaho's regulatory boards to federal antitrust claims. First, **Mr. Toryanski** provided the Committee with an overview of U.S. antitrust laws, including purposes, statutes, the role of the Federal Trade Commission and state action immunity from antitrust laws. Second, he reviewed the facts of the case, the legal procedural history and the primary question presented to the Court. Third, he discussed the opinion of the Court and the applicable points of law resulting from the case.

Chairman Heider asked the Committee members if they had any questions.

Referring to the fact that the Governor of Idaho appoints regulatory board members, **Senator Schmidt** noted that the Senate reviews and confirms the Governor's appointments; he asked whether this confirmation process bolstered the State's oversight of regulatory boards that is now required by this case. **Mr. Toryanski** stated that the confirmation process strengthens the State's oversight of regulatory boards. **Senator Schmidt** commented that this case increases the Legislators' duty to review statutory obligations of the appointees the body confirms.

Senator Martin asked whether any of Idaho's regulatory boards required members to be a member of a professional association and, if so, does this requirement present problems based on this ruling. **Mr. Toryanski** replied there are a number of boards where the relevant professional association nominates candidates to the Governor for appointment, and the Governor is obligated to pick one of these nominated candidates. He said he is unsure if an association has to pick an association member, but in practice he feels that is what happens. **Senator Martin** noted that this ruling does not seem to directly affect associations' recommendations regarding regulatory board members, but he asked if it would be prudent for the State to review this policy. First commenting that he does not take a particular position regarding State policy, **Mr. Toryanski** said that if Legislators

wanted to strengthen State supervision over State regulators, being able to choose from a larger pool of talent and not being bound by a private association would facilitate those efforts.

Senator Schmidt commented that several years ago the Idaho Board of Medicine dealt with an issue similar to the issue raised by Senator Martin. In particular, nominees for the Idaho Board of Medicine were all coming from the Idaho Medical Association; ultimately, the Board of Medicine changed their policy to require the Idaho Medical Association to nominate nonmembers to the Governor for consideration.

S 1295

Relating to Public Assistance. Steve Bellomy, Chief of the Bureau of Audits and Investigations (Bureau) in the Department of Health and Welfare (Department), presented this bill.

Mr. Bellomy presented an overview of the organization and performance of the Bureau's various units, including (i) the Medicaid Program Integrity Unit, (ii) the Welfare Program Integrity Unit, (iii) the Criminal History Unit, (iv) the Internal Audit Unit and (v) the Fraud Analysis Unit (see attachment 2).

Mr. Bellomy stated that this bill amends Idaho Code to clarify how the Bureau intends to apply civil monetary penalties (penalties) to providers. The legislation proposes three main changes: (i) to allow the Department to develop rules regarding how and when penalties are applied, (ii) to reduce the minimum penalty from 25 percent to 10 percent and (iii) to modify how the Department applies penalties when providers fail to obtain required background checks on employees. Because he addressed the fiscal issues during the related print hearing, **Mr. Bellomy** stated that he would not provide additional comments in this presentation. **Mr. Bellomy** reviewed the specific language for the proposed changes with the Committee.

Chairman Heider asked the Committee members if they had any questions.

Referring to the minimum penalty provisions, **Senator Martin** asked Mr. Bellomy to clarify how the penalties would be determined as a percentage of "each item or service improperly claimed." **Mr. Bellomy** responded that the Bureau conducts audits on a claim-by-claim basis. Therefore, if the claim line showed a fee of \$50 (the Amount paid by the Department), then 10 percent (or \$5) would be the smallest penalty percentage (or lowest amount). **Senator Martin** inquired if \$50 is the average claim amount investigated. **Mr. Bellomy** stated that claim amounts cross a broad range. There are many claim lines that are less than \$5 and some that are \$6,000. **Senator Martin** asked Mr. Bellomy to estimate the amount of penalties collected by the Bureau each year (i) when the penalty minimum was 25 percent and (ii) when the minimum penalty is modified to 10 percent. **Mr. Bellomy** responded that last year the Bureau identified claims that were subject to penalties in the amount of \$700,000. **Senator Martin** asked if the 10 percent penalty will result in better compliance. **Mr. Bellomy** said the purpose of reducing the penalty to 10 percent is not to penalize more or less. He added he thinks the 10 percent penalty will result in fairer treatment of the providers.

Referring to the performance of the Welfare Program Integrity Unit, **Senator Lodge** asked how the Bureau identifies issues such as inmates receiving food stamps. **Mr. Bellomy** responded that a jail match report is generated once a month to compare welfare rolls with individuals who have been incarcerated. **Senator Lodge** inquired if food stamp benefits would be taken away from someone incarcerated for three days. **Mr. Bellomy** said that the individual would have to be incarcerated for more than 30 days before recoupment of food stamp benefits was considered. **Senator Lodge** asked Mr. Bellomy to describe what the Fraud Unit does to check food stamp fraud on all levels. **Mr. Bellomy** responded that the Fraud Unit identifies fraud by reviewing (i) complaints, (ii) jail-match reports, (iii) out-of-state usage and (iv) referrals from eligibility staff.

Vice Chairman Nuxoll asked for an explanation, in simple terms, regarding why penalty fees are being reduced from 25 percent to 10 percent. **Mr. Bellomy** responded that the minimum penalty amount is being reduced because the Bureau believed that, in the interest of fairness, certain violations should not be penalized at 25 percent. However, he reminded the Committee that the Bureau would still be able to assess higher penalties for more serious violations. To clarify, **Vice Chairman Nuxoll** asked if the minimum penalty was being lowered to give the Bureau more flexibility over the rate of a penalty, based upon the seriousness of the issue or the intention of the provider. **Mr. Bellomy** stated that although he was uncomfortable determining a provider's intent, he confirmed that the more egregious the violation the higher the penalty assessed would be.

MOTION: There being no more questions, **Senator Schmidt** moved to send **S 1295** to the floor with a **do pass** recommendation. **Vice Chairman Nuxoll** seconded the motion. The motion carried by **voice vote**. Senator Schmidt will carry the bill on the floor of the Senate.

S 1296 **Relating to Background Checks.** **Fernando Castro**, Supervisor of the Criminal History Unit of the Bureau in the Department, presented this bill.

Mr. Castro stated that proposed legislation amends Idaho Code regarding criminal history and background checks. Specifically, he indicated that the proposed legislation seeks to eliminate language regarding federal funding of Department background checks. The funding has lapsed and is no longer available. The Department currently charges fees to adequately fund its background check program and so there is no fiscal impact to the State.

Chairman Heider asked the Committee members if they had any questions.

Referring to the fiscal note, **Senator Schmidt** asked about the amount of federal funds that were lost and must now be sourced by State dedicated funds. **Mr. Castro** responded that federal funding was part of a limited-time pilot program that ended in 2007. There have not been any losses experienced since then because fees were adjusted accordingly when the pilot ended.

MOTION: There being no more questions, **Senator Hagedorn** moved to send **S 1296** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**. Senator Hagedorn will carry the bill on the floor of the Senate.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 3:59 p.m.

Senator Heider
Chair

Karen R. Westbrook
Secretary

Kara Machado
Assistant