

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, March 01, 2018

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Guthrie, Senators Martin, Lakey, Thayn, Souza, Potts, 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) meeting to order at 1:30 p.m.

S 1281 **Relating to Health Benefit Plans - Contraceptives - No Testimony.** **Chairman Patrick** announced the motion made in the previous meeting was out of order and there would be no testimony. **Chairman Patrick** advised Vice Chairman Guthrie to make a new motion.

MOTION: **Vice Chairman Guthrie** moved to hold **S 1281** in Committee. **Senator Potts** seconded the motion. The motion carried by **voice vote**. **Senators Burgoyne** and **Martin** wanted to be recorded as voting **nay**.

MINUTES APPROVAL: **Senator Souza** moved to approve the Minutes of February 22, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

RS 26276 **Relating to Pharmacy Benefit Managers.** **Chairman Patrick** stated this proposed legislation defines a Pharmacy Benefit Manager (PBM). Medicaid is excluded. The bill requires a PBM to register with Idaho beginning in 2020. The creation of the rules and enforcement will be managed by the Director of the Idaho Department of Insurance (DOI).

Chairman Patrick reported the legislation prevents a PBM from limiting an entity or an individual's choice of pharmacy or from forcing or incentivizing an individual to use a pharmacy owned by the PBM. The legislation establishes rules in which the PBM needs to use to determine Maximum Allowable Cost (MAC) pricing. The legislation establishes a process by which a pharmacy can appeal a MAC price and ensures a PBM will not charge a fee not specified in the contract. This bill will provide a platform for future rules and regulations related to the pharmacy and PBM relationship.

UNANIMOUS CONSENT: **Chairman Patrick** asked for unanimous consent to send **RS 26276** to a privileged committee to print. There were no objections.

H 434

Relating to Administrative Bidding. **Barry Miller**, Deputy Administrator, Idaho Division of Public Works (DPW), remarked this legislation will provide legal authority for the DPW to reject bids that exceed the appropriation available for a project.

Mr. Miller reported this proposed legislation clarifies the State's authority to reject public works bids in excess of available appropriation, which has been the policy followed by the DPW. There is no obligation imposed on the State. There is no fiscal impact.

Mr. Miller related the DPW notified the bidders that bids were rejected due to exceeding the appropriation. A few days later, the DPW received a letter from the attorney representing the low bidder. The letter declared Idaho Code § 67-5711C states that when bids are received, the project shall be awarded to the lowest bidder. No exceptions are identified in that section of code. This bill would add the clause, "subject to the provisions of Idaho Code § 59-1015." This would prohibit the awarding of a contract which exceeds the appropriation made for the project.

MOTION:

Senator Martin moved to send **H 434** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 431

Relating to the State Personnel System - Medical Director Employed at State Hospitals. **David Taylor**, Deputy Director, Idaho Department of Health and Welfare (DHW), reported the DHW operates two mental health hospitals: State Hospital North (SHN) and State Hospital South (SHS). He stated employing physicians as medical directors at the hospitals is necessary, yet the DHW struggles to recruit and retain staff. One barrier to successful recruitment is salary, as market rates are significantly higher than rates allowed by the State's classified pay schedule. The Physician Medical Director Institution job classification has already received multiple pay-line exceptions pursuant to Idaho Code §67-5309D; however, the existing pay schedule is insufficient to recruit and retain qualified candidates.

Mr. Taylor remarked the DHW also operates a residential care facility for people with disabilities called the Southwest Idaho Treatment Center (SWITC). Currently, SWITC does not have a need for a medical director. The purpose of this legislation is to designate individuals employed as Physician Medical Director of the Institutions at the DHW as non-classified and not subject to Idaho Code § 67-5301.

Mr. Taylor stated the total annual General Fund impact is currently estimated at \$65,400 and will be used to increase the compensation of the medical directors of SHS and SHN. It should be noted the DHW believes there will be a reduction in the need for the General Fund in the Community Hospitalization appropriation should it successfully retain or recruit medical directors for each State hospital location.

Mr. Taylor noted the fiscal impact is based on the recommendation contained in a September 2017 Physician Compensation Market Analysis compiled by the DHW. He explained the report (Attachment 1). He pointed out the additional responsibilities required of the Medical Director for SHS for which he is paid an additional \$1.56 per hour. He remarked this is a challenge, which explains why the Medical Director position at SHN was vacant for 17 months.

Mr. Taylor reported data demonstrates this vacancy had a direct and substantial impact on the DHW's Community Hospital appropriation which increased by over \$1 million in the General Fund from fiscal year (FY) 2016 to the current fiscal year. In **H 475** the Community Hospitalization appropriation is used to pay for mental health patient care, once an individual is committed to State custody, and before a bed is available in one of the two State hospitals. Consider the average daily cost for community hospitalization of \$1,000 per patient per day (range: \$800 per day to

\$1,200 per day) versus only \$528 per patient per day for SHN and \$636 per patient per day for adults at SHS, which explains the financial importance of having State hospitals operating at maximum capacity. One of the best defenses for containing community hospitalization costs is a strong State mental health hospital system. It should be noted the DHW believes if this bill becomes law, there will be a reduction in the need for money from the General Fund in the Community Hospitalization appropriation.

Mr. Taylor asked the Committee to help improve the State's mental health system in order to reduce Idaho's Community Hospitalization costs and stabilize the executive leadership of the hospital's medical staff.

DISCUSSION: **Senator Burgoyne** wondered if the medical director and administrator positions were separate or combined. **Mr. Taylor** stated the positions were two separate positions, but treated as one position. He noted there were two individuals at each State hospital. He remarked the Medical Director handles patient treatment of all medical decisions that are made at the hospital. **Senator Burgoyne** voiced a concern about the incumbent medical directors having to re-apply for the job, since the change would be from classified to non-classified. **Mr. Taylor** stated the administrators and medical directors would have to apply, but the positions would be held for them. In addition, **Mr. Taylor** stated he has spoken with the administrators and medical directors and they were comfortable with reapplying.

Senator Lakey asked Mr. Taylor to explain why the DHW anticipated costs would decrease. **Mr. Taylor** explained, when hospitals cannot operate at maximum efficiency, there is a waiting list. When medical positions are in place, the hospital can function at maximum efficiency, thus lowering costs.

Senator Souza inquired as to the salary for these positions, since the statistics were per hour. She asked how the annual impact to the General Fund was calculated. **Mr. Taylor** remarked the State increased eight salaries last year. He noted the difference is to move the Medical Director to the salary the DHW is requesting.

Vice Chairman Guthrie wanted to know if the Medical Director would make more money than the Administrator, causing compression. **Mr. Taylor** remarked the Medical Director is already earning more money than the administrator and that would not change.

Senator Burgoyne commented the positions should not be empty for a long period of time.

MOTION: **Senator Ward-Engelking** moved to send **H 431** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 489 **Relating to Personnel System Appointments.** **Susan Buxton**, Administrator, Idaho Division of Human Resources (DHR), reported Idaho Code § 67-5309, Rules of the DHR and the Personnel Commission, removes section (k) concerning provisional appointments, as it is no longer used. The bill also proposes to make technical corrections. Idaho Code § 67-5316 provides a correct code reference related to the deletion of provisional appointments.

There is no fiscal impact to the General Fund or dedicated fund as the agency is removing "provisional appointment." This will not increase or decrease funding.

MOTION: **Senator Lakey** moved to send **H 489** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion.

DISCUSSION: **Senator Souza** and **Ms. Buxton** discussed relating the hiring and probationary processes at the State.

VOTE: The motion carried by **voice vote**.

H 490 **Relating to Non-Classified State Officers and Employees' Bonuses.** **Susan Buxton**, Administrator, Idaho Division of Human Resources (DHR), indicated the purpose of this proposed legislation is to clarify ambiguity in Idaho Code § 59-1603 (11), for the implementation, authorization, and enforcement of the issuance of recruitment and retention bonuses for non-classified employees.

There is no fiscal impact. This bill allows recruitment and retention bonuses to continue to be utilized within existing agency budgets. Enforcement collection of recruitment and retention bonuses will be conducted by the agencies and the DHR using current resources.

DISCUSSION: **Senator Potts** and **Ms. Buxton** discussed the clarification of the ambiguity in the language and the enforcement collection of recruitment and retention bonuses. **Ms. Buxton** commented the Idaho Attorney General's Office requested these changes.

MOTION: **Senator Potts** moved to send **H 490** to the floor with a **do pass** recommendation. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

H 521 **Relating to Motor Vehicle Service Contracts.** **Lance Giles**, Motor Vehicle Protection Products Association, reported the proposed legislation updates the Idaho Motor Vehicle Service Contract Act, which was enacted into law in 1993. The proposed legislation moves the authority to enforce the Act from the Attorney General to the Idaho Department of Insurance (DOI). **Mr. Giles** stated, in addition, the proposed legislation clarifies the definition of a service contract to expressly authorize the following types of contracts: 1) contracts to repair or replace tires or wheels damaged by road hazards; 2) contracts to repair or replace windshield damage by road hazards; 3) contracts to remove dents and dings in a vehicle without sanding, bonding, or repainting; and 4) contracts to repair or replace lost, stolen, or damaged vehicle key fobs.

Mr. Giles stated, the proposed legislation maintains similar penalties for violations and does not preclude a cause of action under the Idaho Consumer Protection Act. There is no fiscal impact because the DOI would not have to hire any additional personnel to enforce the proposed legislation. Based on previous history, there are expected to be very few enforcement actions. To date, there has been a total of one enforcement action brought under the Idaho Motor Vehicle Service Contract Act. **Mr. Giles** indicated there was no opposition to the bill. He stated he worked with Representatives Luker and Gannon, the Idaho Freedom Foundation, the Idaho Attorney General's Office, the DOI, the Idaho Autobody Craftsmen's Association, and the Property Casualty Insurers Association of America.

DISCUSSION: **Senator Burgoyne** and **Mr. Giles** discussed customary performance guarantees or warranties offered at no additional charge when purchasing a vehicle. They also discussed additional charges for a warranty for the purchase of a used vehicle.

MOTION: **Senator Martin** moved to send **H 521** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

Relating to the Barber and Cosmetology Services Act. Senator Den Hartog reported this bill combines the Boards of Barber Examiners and Cosmetology, protects the public, ensures safety and disinfection training for licensees and certificate holders, and provides more flexibility to individuals entering the profession by allowing them to select a more focused area of preparation and practice.

Senator Den Hartog introduced **Joan Callahan**, Attorney, Idaho Bureau of Occupational Licenses (IBOL) who explained the provisions:

- Reduce the minimum hours of instruction required for a cosmetology license;
- Reduce the minimum hours of instruction required for an electrology license;
- Create a new certificate for people who only want to perform makeup artistry and not practice the full scope of cosmetology or esthetics;
- Allow licensees to perform certain services for compensation outside of licensed establishments without limit;
- Allow transfer of educational hours between the professions (thus reducing the number of hours needed to obtain another related license);
- Allow employees of retail thermal styling equipment dealers to demonstrate equipment on potential customers;
- Exempt out-of-state licensees whose work in Idaho is incidental to theatrical or visual arts productions; and
- Expand exemptions for students and out-of-state licensees who are in Idaho to demonstrate or teach.

The combined barber examiners and cosmetology boards will include representation from both professions and the public; they will facilitate efficiencies in the administration of the law.

Ms. Callahan stated there is no impact to the General Fund. It is anticipated this legislation will reduce the Idaho Bureau of Occupational Licenses' (BOL) dedicated fund expenditures. Combining boards will result in fewer total BOL Board meetings, fewer board members, and lower expenses.

DISCUSSION: **Senator Lakey** and **Ms. Callahan** discussed the issuance of certificates for experienced makeup artists who would not require further education and education for those who could not demonstrate strong sanitation experience.

Senator Souza asked about requirements for makeup artists coming from out-of-state. **Ms. Callahan** stated no test would be required; however, an applicant would have to produce evidence of course completion. A discussion ensued about notification of the BOL by out-of-state artists obtaining a certificate to work at an event. Theatrical and demonstrations are exempt.

Senator Martin asked what the results were of those in favor of combining the boards and the reduction in hours. **Ms. Callahan** stated the question was difficult to answer due to the many issues addressed. The issue where the greatest disagreement occurred was about the reduction in hours.

TESTIMONY: **Kris Ellis**, Northwest (NW) College Federation, testified in support of this bill.

Lou Starita, Paul Mitchell Schools of Boise and Nampa, testified in support of the bill. He remarked one of the benefits of the bill is a student could graduate three months sooner and save thousands of dollars to attend barber school after graduation from cosmetology. He thanked the BOL for their leadership.

DISCUSSION: **Senator Den Hartog** thanked the Barber Examiners and Cosmetology Boards for their tremendous leadership. She commented this bill fits in well with the current atmosphere, where there is a focus on occupational licensing and the protection of public health and safety.

MOTION: **Senator Souza** moved to send **S 1324** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:29 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary