

## 2020 IDAHO LEGISLATURE

### UPDATE

February 17, 2020 through February 21, 2020

*Michael McGrane, RN*

#### **H0458 - Battery Against Health Care Workers**

During a five hour hearing on Monday in the House Judiciary and Rules Committee, mental health advocates along with individuals and family members of those who had been charged with a felony for battery against a health care worker spoke of the impact of being charged and sometimes jailed while seeking help for a mental health condition. Since 2014 when the law was passed making battery against a health care worker a felony, there have been 433 charged statewide. It is estimated that 39% or 168 suffered from a mental illness. It is unknown how many of those cases occurred from uncontrollable behavior or that resulted in a felony conviction. In many cases, prosecutors use the felony charge to leverage a plea to a lesser misdemeanor, as was the case in one of the most notable examples given at the hearing. On the other side, several nurses, an emergency physician along with ANA-Idaho, NLI, the Idaho Center for Nursing, the Idaho Medical Association and psychiatric hospitals spoke of cases where serious injuries were sustained against health care workers. The bill as presented included a wide range of mental illness from mood and memory disorders to psychosis and would have included anyone who had been treated for mental illness, not just those under acute treatment or seeking treatment. Representative Necochea, who brought the bill, did explain that the intent was to limit it to “unlawful touching” as defined in the battery law, and not to more serious physical attacks, however that language was not included.

ANA-Idaho/NLI offered to work with Representative Necochea to revise the bill language and is committed to working with her along with advocates and prosecutors to avoid unnecessary criminalization of mental illness and protect nurses and other health care workers.

In the end, the chairman chose to hold the vote on H-458:

*House of Representatives State of Idaho  
House Judiciary, Rules, & Administration Committee Rep. Greg Chaney, Chairman  
Rep. Lauren Necochea LNecochea@house.idaho.gov  
RE: Status of H458 Dear Rep. Necochea:*

*February 20, 2020*

*I am writing to confirm that H458 will not be scheduled for a full committee vote this session.*

*Thank you for bringing to light the issues you did in our committee's hearing on H458. The stories you shared and that were shared by those who testified were tragic to say the least. It was evident to me that §18-915C, Idaho Code, has been misused in certain instances.*

*I agree with you that something needs to change.*

*However, I was also moved by the troubling and often traumatic experiences faced by medical personnel when trying to do their jobs. Emergency room personnel seem especially vulnerable given the compulsory treatment they provide and the volatile situations they face.*

*I think your bill seeks to balance the risk of criminally charging persons in a mental health crisis with leaving enough protections in place to protect healthcare workers. I am concerned, however, that the specific standard in H458 may be problematic to administer.*

*All of these factors cause me concern with moving the bill forward.*

*I hope to take you up on the offer you made to work with stakeholders in the interim. I hope to see a bill advance in the next legislative session to address these concerns and am forwarding a copy of this letter to interested parties in the hopes that it will help communicate my seriousness that changes do, in fact, need to be made. It is my expectation that the groups that testified against H458 at hearing will engage with you with all sincerity and perseverance.*

*Some suggestions (though don't feel constrained to these):*

- 1. First offense misdemeanor;*
- 2. Removing 18-903(b) as you'd planned;*
- 3. Limiting the statute to emergency medicine;*
- 4. Diversion options including mental health court where available.*

*If I can be of assistance, or if you encounter problems getting stakeholders to engage with you, please let me know.*

*Sincerely,*

*Rep. Greg Chaney*

*cc: Idaho Medical Association; Idaho Nurses Association; Idaho Hospital Association; Idaho Prosecuting Attorney's Association; Idaho Defense Attorney Association; Idaho Fraternal Order of Police; House Judiciary, Rules, & Administration Committee.*

### **H0436 – Health Care Directive Registry – Narrowly Passed House H&W, to House Floor**

Currently, anyone with an advanced care directive can submit it to the Idaho Secretary of State's office where it is maintained in a stand-alone registry for access by health care providers. There is no automatic link to medical records or the Idaho Health Data Exchange. H-436 would move the Health Care Directive Registry from the Secretary of State to the Department of Health and Welfare and integrate it with the Data Exchange and allow 24-hour web-based access to health care providers. There would be a one-time \$250,000 cost (\$25,000 state/\$225,000 federal) for technology design and implementation, and \$500,000 (\$250,000 state/\$250,000 federal) for ongoing operations, much of which is working with hospitals and providers to build program awareness and patient enrollment. During the hearing on Thursday, opposition was related to the ongoing costs of operation.

### **H0340 – Residential Substance Abuse Treatment for Teens – House H&W, Sent to General Orders**

Good Samaritan Rehabilitation in Coeur d'Alene, a faith-based adult treatment center operated by Pastor Tim Remington (recently appointed to the House), has a successful record in treating adults. Idaho has no adolescent residential treatment programs forcing parents to seek treatment out-of-state. Senator Souza in her presentation highlighted the state's failure to do anything to help adolescents who

are barred from crisis centers and adult treatment centers for drug and alcohol treatment. This bill would allow residential treatment for adolescents, 13-17, in the Good Samaritan Rehabilitation Center as an unlicensed pilot program. There has been an outpouring of concern by counselors, social workers, disability rights advocates and others who question the faith only approach to drug and alcohol treatment and the safety of youth in an unlicensed residential facility with adults.

H340 as initially presented would have allowed anyone to operate unlicensed treatment centers for youth statewide. After the introduction hearing, it was sent to General Orders for amendment. There are three proposed amendments, one from the sponsor that makes Good Samaritan the sole pilot program, a second amendment that incorporates all of the licensing standards for adolescent treatment including separation from adults, male/female separation, medication management, and schooling, and a third compromise amendment that focuses on residential separation and safety requirements.

### **Behavioral Health Council**

Wednesday, the Governor, the Idaho House and Senate, and the Idaho Supreme Court formally announced the creation of the Idaho Behavioral Health Council, a 13-member council that will work with local governments, educators and others to reexamine all of the current efforts to address behavioral health and refocus efforts to become more effective and systematic. The Governor's announcement stated, "Behavioral health issues continue to impact the corrections system, the judicial system, hospitals, schools, and communities. They contribute to a growing prison population, drug overdose deaths, and a high suicide rate."

**S1240 – Global Signature Bill – Signed by the Governor, becomes Law** extends signature authority to APRNs (Nurse Practitioners, Nurse Anesthetists, Nurse Midwives and Clinical Nurse Specialists) for items that currently require physician signatures such as disabled parking permits, athletic physicals and mental health declarations. Nurse Practitioners are the sole providers in 11 Idaho communities where patients currently must travel to other locations to seek physician's authorization.

### **H0392 - Liability Protection for Healthcare Volunteers – Passed House 69-0, Senate Floor**

This bill expands liability protection to any licensed, certified or registered healthcare professional when providing volunteer services.

### **H0403, H0454, H0455 - Child Protection Bills – Passed House Judiciary & Rules, to House Floor**

These three bills, introduced by Representative Heather Scott, would reduce requirements for mandatory child abuse reporting to certain individuals, adds liability immunity for optional reporting, limits the definition of "neglect" to acts or omissions that could cause imminent serious harm, and references parental rights related to investigations in the Child Protection Act.

### **H0519 - Life Sustaining Treatment – Simon's Law**

Simon's law would prevent children from being denied life-sustaining treatment without parental knowledge or consent. It would require a parent be notified 48 hours prior to a decision to withhold life-

sustaining treatment and allow the parent up to 15 days to make alternative arrangements for the child to be transferred to another facility where life-saving care could be continued. This is a national effort following a 2010 case in Missouri of a 3 month-old with trisomy 18 who unknowingly had a DNR order in the medical record.

#### **S1252 – Idaho Injectable Cosmetics Safety Act – Withdrawn**

The “Injectable Cosmetics Safety Act” would have required head, facial and neck injections of Botox and soft tissue fillers, to be performed only by physicians, PAs, RNs, dentists and pharmacists, and prohibits the delegation to any others non-licensed person.

#### **H0385 – Certified Medication Assistants – Passed House 66-0, to Senate H&W**

Certified Medication Assistants are already allowed under the Nurse Practice Act. This year the Board, while retaining authority, removed rules related to medication assistants as there had only been one person certified who is no longer practicing. This bill updates and clarifies the requirements for Certified Medication Assistants and provides an avenue for Certified Nurses Aides to become Certified Medication Assistants. The bill is proposed by the Idaho Health Care Association that represents long-term care facilities. Requirements for training, an exam and certification remain under the Board of Nursing.

#### **H0485 - Student Nurses Loan Repayment – House Transportation Committee**

This bill would create a nursing student loan repayment program for nurses who work at the State Veterans Home. It is a way to recruit and retain nurses for the Veterans Home.

#### **H0506 – Surprise Medical Billing – House H&W**

There has been increasing public outrage when a person seeks care at an in-network hospital, but unknowingly is treated by an out-of-network provider resulting in charges that are not covered by their insurance. H0387, if passed, would make surprise medical bills void but allow out-of-network providers to be reimbursed at the same rate negotiated for the facilities’ contracted providers. The bill has been revised to allow a patient to knowingly choose to use an out-of-network provider.

#### **H0515 – Idaho Patient Act – Passed House Business Committee, to House Floor**

This bill targets medical bill collectors and attorney fees. It would set time to allow a patient to pay their bill or to dispute the charges before any collection activity. It also requires notices to be filed, and limits the collection, attorney fees and interest charges that can accumulate exponentially. Frank VanderSloot, CEO and founder of Melaleuca in Idaho Falls is pushing this bill to counter medical bill collectors. It follows a case where one of Melaleuca’s employees had a \$294 debt that escalated to over \$5,000 after interest, collection and attorney fees were added. Last year VanderSloot created a \$1M legal defense fund to represent people in medical debt cases.

#### **H0342 – Telehealth – Passed House 68-0, Senate H&W Sent to Amending Order**

Teledoc Health is a national telemedicine company offering virtual care through a variety of telecommunication technologies. This bill broadens the ways patients, especially those in rural communities without broadband and the ability for face-to-face, two-way audio and visual communication to receive medical care. The bill, if passed, would allow patients to connect with a physician via telephone, e-mail and other technologies to establish a provider/patient relationship without face-to-face audio and visual connection to receive a medical evaluation, diagnosis and prescriptions.

#### **S1295 – Teledentistry – Passed Senate 30-4, to House H&W**

S1295 tightens requirements for teledentistry in the Dental Practice Act to establish a referral relationship with a dentist accessible to the patient's location in Idaho prior to providing any teledentistry services, provide advanced notification to the patient that in-person treatment may be required at an additional cost, require the review of patient records and x-rays from an in-patient exam conducted within the prior six months, and ensure the patient retains the ability to file a complaint with the Board of Dentistry.

#### **HJM12 – Opioid Trafficking – Congressional Delegation**

This is a House Joint Memorial to the Idaho Congressional Delegation that underscores the severity of opioid trafficking in Idaho. Melinda Smyser with the Office of Drug Policy shared statistics that showed a 6,000% increase in drug trafficking in Canyon County. The interstate highway system, I-15 in Eastern Idaho, I-84 in Western Idaho and I-90 in Northern Idaho are corridors for illegal drugs, Fentanyl and Methamphetamines, coming into the state, most of it from Mexican drug cartels.

#### **H0351 – Medicaid Reimbursements to Hospitals and Nursing Facilities – Passed House 44-24, Passed Senate H&W, to Senate Floor**

As a result of the Governor's directive to cut state agencies budgets 1% this year and another 2% next year, the Medicaid Division in the Department of Health and Welfare has been working with hospitals and nursing facilities to realign Medicaid payments to move from cost-based to value-based reimbursement that incentivizes quality and improved health outcomes. This would reduce state Medicaid costs by \$4.9M in FY2020 and \$13.7M in FY2021. The bill is supported by the Idaho Hospital Association and the Idaho Health Care Association.

#### **H0318 – Division of Occupational and Professional Licenses – Passed House 43-24, Passed Senate Business & Commerce Committee, to Senate Floor**

This bill renames the Bureau of Occupational Licenses to the Division of Occupational and Professional Licenses and adds full authority for the Governor to reorganize the many commissions, trade councils, and professional boards, including the Boards of Nursing, Medicine, Dentistry and Pharmacy. The objective is to streamline operations; however, the concern is that it could place too much authority under the Division of Occupational and Professional Licenses and the professional boards could

eventually lose their independence and identity. This follows a trend in other states to consolidate boards and create umbrella oversight.

### **Gender Identity – Vital Statistics Rules – Hearings to be Scheduled**

All Department of Health and Welfare rules have been passed except for the gender identity rule. This rule will address gender reassignment and gender identity on birth certificates. Because it is controversial, it was withheld from the initial Committee consideration. The decision by the Committee Chairman, Representative Fred Wood, was to hold consideration of the Vital Statistics gender identity rules to allow two pending bills, one in the House and one in the Senate to move forward before the rules review.

### **Religious Exemption to the Child Protection Act – To be Introduced**

A bill to narrow the religious exemption to the Child Protection Act is being introduced by Representative John Gannon of Boise. For several years, attempts to eliminate the exemption have failed. Idaho law requires parents to *“furnish necessary food, clothing, shelter, and medical attendance for his or her child or children”* except for allowing parents to refuse medical care based upon religion. The law was enacted in 1972 under pressure from the federal government to support religious rights. Religious exemptions survive in only a handful of states. Since the law was enacted, nearly 200 Idaho children have died from treatable illnesses where parents have chosen prayer over treatment. The bill introduced this year would require parents to seek medical attention for their child specific to serious illnesses that could cause disability or death. The bill faces a difficult hurdle in the Senate. Monday is the last day for bill introduction.

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The site includes information on who your legislators are (you can search by your address), and how to contact them. In addition is information on House and Senate Standing Committees, with photos and background information on each legislator. The site also has links to Committee agendas and meeting minutes.