

2020 IDAHO LEGISLATURE

UPDATE

March 9, 2020 through March 13, 2020

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With concerns over coronavirus, it was looking like the legislature could adjourn as soon as next Monday. This week bills were being moved immediately through the reading calendars to a vote. There is now apparently an agreement on how administrative rules will be approved. This has been a major point of contention between the House and Senate. Earlier this session, Governor Little issued an executive order to activate all state agency administrative rules as temporary if the legislature failed to act. Unless there is a disapproval of a rule by the legislature, all rules could automatically become effective.

Property taxes has been the big issue. The legislature has created an interim committee to meet during the summer to draft tax legislation for next year. In the meantime, a bill to freeze property taxes failed in the Senate, and late Friday, retaliatory property tax bills were introduced on both sides. State funding for Medicaid expansion is also in limbo. Other hot-button issues including abortion, guns in schools, gender identity, and hemp have dominated the last few weeks of the session. Adjournment may not be so soon. The target remains this coming Friday. Some bills will get left behind in the urge to conclude the session.

There has been a resurrection of the Health Care Directives bill that failed in the House over cost concerns. With leadership support, the bill, sponsored by the Idaho Hospital Association, has been reintroduced to move the Health Care Directive Registry from the Secretary of State to the Department of Health and Welfare.

S1295 – Teledentistry – Passed Senate 30-4, to House Floor

At the House Health and Welfare Committee hearing on Tuesday, this bill was strongly opposed by teledentistry providers, Invisalign, Smile Direct Club, Smile Shops, the Opportunity Solutions Project and The American Teledentistry Association. In support of S1295, dentists and orthodontists told of cases where misalignments caused by poor impressions and improperly placed aligners required major corrections.

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 right to file a complaint with the Board of Dentistry.

H0616 – Health Care Directive Registry – H436 Dies on House Floor 30-38 – Reintroduced as H616, Passed House 52-18, to Senate Judiciary & Rules Committee

To save the effort to move the Health Care Directive Registry from the Secretary of State to the Department of Health and Welfare, the Idaho Hospital Association worked with House leadership to reintroduce this bill with much lower costs to the state. 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. H616 would move the Health Care Directive Registry from the Secretary of State to the Department of Health and Welfare, integrate it with the Data Exchange and allow 24-hour web-based access to health care providers. The revised one-time cost would be \$351,300 (\$35,130 state/\$316,170 federal) for technology design and implementation, and \$153,200 (\$38,300 state/\$114,900 federal) for ongoing operations.

H0340aa – Residential Substance Abuse Treatment for Teens – Passed House 44-24, Amended in the Senate, to Senate Floor

At the Senate Health and Welfare Committee on Tuesday, Senator Souza offered to amend her bill that would exempt from licensing the Good Samaritan Rehabilitation Center in Coeur d’Alene to provide adolescent residential drug and alcohol treatment. There were five pages of citizens wishing to testify against H-340a. The House by a vote of 44-24 passed H340a, an amended version of the bill that removed all safeguards that were in Senator Souza’s original bill. The new amendments offered by Senator Souza would replace all the restrictions in the original bill including parental consent, notification of law enforcement of the program, notification of school counselors of a student’s participation, physician confirmation of drug or alcohol abuse without a mental health diagnosis, background checks for all staff working with children, access to medications, access and parental consent to emergency care if needed, and separation of males and females and separation of adults and children residents

Good Samaritan Rehabilitation in Coeur d’Alene, a faith-based adult treatment center operated by Pastor Tim Remington who was recently appointed to the House, has a successful record in treating adults with addiction. Idaho has no adolescent residential treatment programs forcing parents to seek out-patient treatment or go out-of-state for residential programs. The amended bill exempts the Good Samaritan Rehabilitation Center from licensing regulations as a “pilot program” to treat teens 13-17. During testimony on Tuesday, it was revealed that there are three other, licensed, adolescent treatment programs in the state including one faith-based program in Pocatello. Pastor Remington’s argument for not licensing is that the cost of additional staff is prohibitive. He claims to meet all the other licensing conditions. If the Senate amended bill passes, it will need to go back to the House Health and Welfare Committee for approval.

S1354 – Hospital Regulations CMS, Health Facility Rules – Passed Senate 34-0, to House Floor

Since the passage of the Restraint and Seclusion rules last year, nurses and hospitals have voiced great objection to the 15-minute observation requirement, along with other onerous requirements that all hospitals are subject under the “Rules and Minimum Standards for Hospitals in Idaho.” In addition to state requirements, CMS requires hospitals to meet “Conditions of Participation” in order to receive Medicare payments. A stated objective of the revisions to the state rules last year was to comply with the federal requirements, however in some instances the Idaho rules became much more stringent than the federal rules. S1354 would state that any rules in the Idaho Minimum Standards for Hospitals that are more restrictive than CMS do not apply to hospitals that are certified by CMS. With the the

exception of North Idaho Hospital, operated by the state, all hospitals in Idaho are certified by CMS. If passed, this bill would become effective July 1st and remove the strict observation requirements.

H0600 – County Share of Medicaid Expansion – Failed House H&W

Enrollment in the Medicaid Expansion program began on January 1st with 63,000 currently enrolled. Funding for the program consists of 90% federal dollars and 10% or \$4M in state dollars. Funding for the 2020 fiscal year was designated by the legislature last session. However ongoing funding has been in limbo with recommendations of a legislative interim committee and wrangling over funding sources this year. In the past, indigent medical expenses for those not covered under Medicaid came first from the county indigent programs that paid the first \$11k of a claim. The remaining coverage came from the state Catastrophic health care fund. The county funds will expire this year, and the Catastrophic fund is set to expire in June 2021. H600 would have redirected the two funds to pay for Medicaid Expansion.

An alternate proposal to move funding for Health Districts from the state to the counties, then have the state fully fund Idaho's share for Medicaid Expansion also failed on Friday. A third bill was introduced late Friday and will be heard Monday morning.

H0395 – Lewis and Clark State College – Signed by the Governor, becomes Law

The charter that established Lewis and Clark State College limits offerings to four-year college courses in science, arts and literature, and courses that would lead to a baccalaureate degree or career technical education of less than four years. Removing the restriction would allow Lewis and Clark to provide graduate level programs approved by the Board of Education, specifically a graduate nursing program.

H0531 - Telehealth Medication Assisted Treatment (MAT) – Passed House 66-0, Failed Senate H&W

This bill would have allowed drugs used for Medication Assisted Treatment for drug abuse to be ordered via telehealth allowing prescribing providers to remotely monitor patients and oversee unlicensed staff at remote clinics to collect urine samples and issue MAT drugs without direct supervision. The bill was held by the Senate Health and Welfare Committee over concerns brought by the Board of Medicine.

S1348 – Controlled Substances; Review of Prescription Drug History – Passed Senate 34-1, to House Floor

Current law requires prescribers to register with the Prescription Drug Monitoring Program (PDMP) but does not require them to use it. A study by the Board of Pharmacy showed that the 100 top prescribers used the PDMP only 37% of the time. This bill would require prescribers to check the PDMP prior to writing opioid or benzodiazepine prescriptions.

S1240 – Global Signature Bill – Signed by Governor, becomes Law

S1240 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 – Signed by Governor, becomes Law

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

H0455a - Child Protection – Limits Mandatory Reporting of Abuse and Neglect – Failed House 25-42

H455 was amended to mandate reporting within 24 hours by anyone who observes abuse, neglect or abandonment of a child. It also provides immunity from liability for anyone who fails to report abuse.

H0578 - Life Sustaining Treatment – Simon's Law – Passed House 63-5, to Senate Floor

Simon's Law, formerly H519, was reintroduced. If passed, it 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 transfer the child 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. After some emotional testimony, the House Health and Welfare Committee voted to send the bill to the House floor. Already, Idaho law requires a patient's, guardian's, or parent's consent on a Physician Orders for Scope of Treatment (POST) for a "Do Not Resuscitate" order to be effective. And federal EMTALA law permits a parent to transfer their child to another facility if they disagree with the care being provided. This bill has support from Right to Life Idaho the the Idaho Family Policy Alliance.

H0385 – Certified Medication Assistants – Passed House 66-0, Passed Senate 35-0, to Governor

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

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

This is the third version of the bill, previously H341 and H387. 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. H0506, 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 49-20, Passed Senate 32-1, to Governor

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.

H0342a – Telehealth – Passed House 68-0, Passed Senate 32-0, to Governor

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 or 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.

H0351 – Medicaid Reimbursements to Hospitals and Nursing Facilities – Signed by Governor, becomes Law

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 – Signed by Governor, becomes Law

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.

S1351a – Occupational Licensing Review Committee – Passed Senate 33-1, Passed House 49-19, to Governor

As a follow-up to the Occupational Licensing Reform Interim Committee, this bill would establish a licensing review committee for a three year period in order to 1) determine the necessity for health, safety and welfare; 2) determine the least restrictive means of regulation; 3) determine why the public cannot be protected by other means; 4) weigh the cost versus benefit of licensing, and 5) determine whether the regulation will have a negative impact on job creation, retention or wages, or place an undue burden on an individual to practice their profession.

H0317 – Optometrist Licensing – Passed House 58-11, Failed in Senate H&W – Reconsideration Failed

H-317 is the controversial bill that would have allowed optometrists to practice laser eye treatment under specific requirements. The bill was passed by the House but failed in the Senate H&W Committee. The Committee Chairman, Senator Martin, brought the bill with amendments back for reconsideration on Tuesday. The Committee voted again to hold the bill, permanently killing the legislation.

Vital Statistics Gender Identity Rule – Birth Certificates - Failed

Wednesday, the House and Senate Health and Welfare Committees took up consideration of the rules for the Bureau of Vital Statistics. These rules have been held to allow the three gender identity bills to progress through the legislature first. The proposed rules were crafted by the administration to comply with a federal court decision that found that in blocking transgender individuals from correcting their birth certificates to match their gender identity, Idaho violated the Equal Protection Clause of the 14th amendment to the U.S. Constitution. Despite the court ruling, both committees voted to approve the Vital Statistics rules with the exception of the Gender Identity rule.

H0509 – Gender Identity, Birth Certificates – Passed House 53-16, to Senate Floor

Three bills deal with Transgender issues. H509 passed the House in defiance to a federal court order to recognize a person's altered gender on their birth certificate. The bill requires birth certificates to only recognize the biological sex of the person at birth.

H0465 – Transgender Treatment – House Judiciary and Rules Committee – Held

The bill would have made it a felony for a provider to perform surgery or prescribe hormone or other therapy to alter a child under 18's sexual identity.

H0500a – Gender Identity Participation in Sports – Passed House 52-17, to Senate Floor

After two days of testimony, most in opposition to H-500, the Senate Health and Welfare Committee on a vote of 6-5 moved to send the bill to the full Senate for approval. H-500 prohibits transgender females from participating in school sports and allows, based upon accusations, female genetic and genital examinations to establish gender. Title IX of the Education Amendments Act of 1972 is a federal law that states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." H-500 may also violate the 4th Amendment's prohibition on

unreasonable search, and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution as it targets only females. If passed, H-500 is sure to be challenged in the courts.

Religious Exemption to the Child Protection Act – To be Introduced

Any effort to limit the “Religious Exemption to the Child Protection Act” will not progress this year. Once again, 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.