

## 2020 IDAHO LEGISLATURE

### UPDATE

March 2, 2020 through March 6, 2020

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*March 20<sup>th</sup> remains the aggressive target for adjournment of the 2020 legislative session. Both the House and Senate are moving bills very rapidly. An early adjournment will allow members to begin campaigning for the May primary elections. A number of controversial bills pander to ideologies in advance of the election including abortion and gender identity. The “going-home” legislation this year will be property tax and grocery tax relief. There are still no bills to address the Religious Exemption to the Child Protection Act.*

#### **H0340 – Residential Substance Abuse Treatment for Teens – Passed House 44-24, Senate H&W**

After an hour of passionate debate, the House voted 44-24 in favor of H-340 as amended. 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. Restrictions that were in the original bill, were entirely removed in the amended bill. So there is no specific requirement for separation of adults and teens, or males versus females in the program. There are also no specific requirements for background checks or the qualification of staff to treat youth. There is no provision education during the treatment period, and other than existing law that requires the reporting of abuse, there are no additional requirements, other than the commitment of Rev. Remington, to ensure the safety of teens in the program. Reportedly, the program is entirely faith-based. It has had an laudable record in treating adults with drug and alcohol additions. Good Samaritan did have a juvenile treatment program in the past, but elected to suspend that program when licensing requirements became burdensome. Much of the supportive testimony on the House floor Monday focused on the success and community support for the program in Coeur d’Alene and the ideology that parents should be free to choose the care of their children without state interference. While the state does have licensing requirements for juvenile residential treatment, H340 would create a exemption from licensing specific to the Good Samaritan program. **The bill will next be heard Tuesday in the Senate Health and Welfare Committee, 3:00PM in Room West Wing 54 at the State Capitol.**

#### **S1354 – Hospital Regulations CMS, Health Facility Rules – Passed Senate 34-0, to House H&W**

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 accept Medicare patients and 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 1<sup>st</sup> and remove the strict observation requirements.

#### **H0436 – Health Care Directive Registry – Dies on House Floor 30-38**

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, integrate it with the Data Exchange and allow 24-hour web-based access to health care providers. The cost is 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 was working with hospitals and providers to build program awareness and patient enrollment. The bill failed on opposition to the ongoing costs of operation, calling out "further bloating of the Department of Health and Welfare's budget." There is a possibility another, similar bill might be introduced.

#### **H0395 – Lewis and Clark State College – Passed House 60-8, Passed Senate 34-0, to Governor**

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, Held by Senate H&W**

This bill would have allow drugs used for Medication Assisted Treatment for drug abuse to be ordered via telehealth allowing prescribing providers to remotely monitor patients and oversee 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 H&W**

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 – Passed House 69-0, Passed Senate 31-1, to Governor**

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 H&W, to House Floor**

Simon's Law, formerly H519, was reintroduced with technical corrections. 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**

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.

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

**S1295 is scheduled for a hearing on Tuesday, March 10<sup>th</sup>.** It 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.

#### **H0351 – Medicaid Reimbursements to Hospitals and Nursing Facilities – Passed House 44-24, Passed Senate 32-3, Signed by Governor become 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 – Passed House 43-24, Passed Senate 25-8, Held for Reconsideration**

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 – Amended, to Senate Floor**

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.

#### **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 14<sup>th</sup> amendment to the U.S. Constitution. In the end, both committees voted to approve the Vital Statistics rules with the exception of the Gender Identity rules, in spite of the court ruling.

#### **H0509 – Gender Identity, Birth Certificates – Passed House 53-16, to Senate State Affairs**

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 make it a felony for a provider to perform surgery or prescribe hormone or other therapy to alter a child under 18's sexual identity.

## **H0500 – Participation in Sports – Passed House 52-17, to Senate State Affairs**

H-500 Prohibits transgender females from participating in school sports and allows female genetic and genital examinations to establish gender based upon accusations. State Affairs Committee heard two hours of testimony Friday morning, the majority opposing H-500. 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 4<sup>th</sup> Amendment's prohibition on unreasonable search, and the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution as it targets only females. If passed, H-500 is sure to be challenged in the courts.

**Senate State Affairs heard testimony Friday, then rescheduled to hear further testimony 8:00 AM, Monday, March 9<sup>th</sup>, in Room 55 of the State Capitol.**

## **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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