
Legislative Report

Idaho Academy of Family Physicians

By Kathie Garrett-Legislative Advisor

kgarrettidaho@aol.com or 921-8518

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2011 LEGISLATIVE SESSION FINAL REPORT

The First Regular Session of the Sixty-first Idaho Legislature adjourned *Sine Die* on Thursday, April 7, 2011.

There is difference of opinion as to the results of this Legislative session. The Democrats held a press conference claiming “this was the worse session ever.” The Republicans agree it was difficult but point to areas they felt were successful. The Republicans came to town vowing not to raise taxes. They went home feeling they kept that promise. The Republicans felt that they had to reform public education in order to balance the budget. The Democrats felt that the reform will have devastating effects on the education of Idaho’s children. The Republicans felt that they took a surgical approach to eliminating \$108 million of state and federal funds from Medicaid. The Democrats felt that the cuts had put Idaho’s most vulnerable people at risk.

The public was invited to participate and they came to testify and protest. The Republicans will say they had an open process. The Joint Finance and Appropriation Committee took public testimony for the first time. When the vote didn’t go the way the public wanted, they were convinced that the Legislators were not listening.

Frustrated by not having a hearing on tax increases and the tobacco tax, the Democrats held their own public hearing. In an unusual move, the Chairman of the House Health and Welfare Committee allowed two days of hearings on Medical Marijuana but only allowed those in favor of legalizing it to testify.

It is difficult to say who won and who lost during the 2011 Legislative Session. Perhaps time will tell.

HEALTH CARE REFORM

National Health Care Reform became an important discussion. The discussion soon became more about the constitutionality of the Patient Protection and Affordable Care Act (PPACA) and state’s rights than health care. Those who opposed the National Health Care Reform were not satisfied with just suing the Federal government, they led the effort to pass “nullification” legislation to stop any implementation of the National reform

The first piece of legislation (HB 59) declared the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 as “null and void” in the State of Idaho. HB 59 was deemed too far reaching and did not have a hearing.

HB 59 was replaced with HB 117. HB 117 removes the word “null” and uses the word and concept of “interpose.” The concept being that it is the duty of the State to interpose between the citizens of Idaho and the federal government when the federal government has exceeded its constitutional authority. This bill declares that PPACA void and the state shall not participate in it. HB 117 passed the House on a vote of 49-20 but failed in the Senate State Affairs Committee.

The next effort was HB 298. This bill will stop the implementation of the PPACA's discretionary provisions while providing a verification process to protect taxpayers against the unnecessary implementation of the PPACA during fiscal year 2012. The bill passed the House and Senate. As yet, it has not been signed by the Governor. This legislation may have far reaching effects on primary care. **The IAFP is working to identify aspects of the bill that will hinder the Patient-Centered Medical Home Collaborative project, our residency training programs and the 10% increase in primary care payments for family physicians. We will be sending letters to the Governor to address the issues and keep you posted on our progress.**

Not satisfied, the House sent the Department of Insurance appropriation bill back to the Joint Finance and Appropriation Committee to remove the Department's spending authority for about \$2.5 million of Federal Grant money to begin working on a state insurance exchange. The Department of Insurance was granted authority to spend \$500,000 of dedicated funds “to protect state regulation.”

OTHER LEGISLATION

The Tobacco Tax legislation did not receive a hearing this year due to the lack of support at the committee level. The IAFP will continue to work with our partners to support a tobacco tax increase to help the citizens of Idaho achieve a healthy lifestyle. We believe that prevention is the best way to combat tobacco addiction and hope that our legislators will come to realize the benefits of a tobacco tax increase. Idaho's tobacco tax is among the lowest in the country and increasing the tax on tobacco by \$1.25 can prevent an additional 19% of youth from ever picking up that first cigarette, reduce adult tobacco users and shrink medical costs associated with tobacco use by decreasing overall consumption, thus minimizing demand for medical attention.

SB 1115 Relating To Abortion And The Insurance Contract: The federal health care legislation signed into law by President Obama in March of 2010 will require the insurance exchanges to provide coverage for elective abortions unless the affected state chooses to "opt out." Concerned that taxpayer money might be used to fund abortions, the **Legislature passed and the Governor signed into law a prohibition against qualified health plans offered through an Idaho insurance exchange to offer coverage for abortion.**

SB 1165 Pain-Capable Unborn Child Protection Act: It is the purpose of SB 1165, patterned after Nebraska legislation, to assert “a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.” The bill includes exceptions for the life and health of the mother excluding psychological or emotional conditions. It does not make an exception for lethal fetal anomalies.

There was strong testimony both for and against the issue. Ken McClure expressed the IMA concerns that the legislation as written would alter the standard of care for obstetrics in Idaho by banning terminations after 20 weeks for fatal conditions such as anencephaly. There was also concern raised that the bill's definition of “abortion” would outlaw scheduled inductions near full term. **This Legislation passed both the House and Senate. As yet it has not been signed by the Governor.**

HCR 23 Rejecting Certain Medicaid Rules

This concurrent resolution closes a loophole in the Medicaid rules that would allow Medicaid to pay for abortion for woman under the age of eighteen. **HCR 23 passed both the House and Senate. A concurrent resolution does not need a Governor's signature.**

HB 187 Relating To Freedom of Conscience for Health Care Professionals:

According to Representative Ellsworth this bill resolves a narrow conflict between the Freedom of Conscience for Health Care Professionals Act (IC 18-611) and the Medical Consent and Natural Death Act (IC 39-4513).

The bill states “in cases where a living will or physician's orders for scope of treatment (POST) is operative, as defined by the medical consent and natural death act, and a physician has a conscience objection to the treatment desired by the patient, the physician shall comply with the provisions of section 39-4513(2), Idaho Code, before withdrawing care and treatment to the patient.”

AARP and others opposing the Legislation felt that HB 187 did not go far enough to protect people's end of life decisions. They argued that end of life issues were wrongly place in the section of Idaho Code dealing with abortions.

HB 187 passed both the House and Senate. As yet it has not been signed by the Governor.

SB 1070aa Homicide, Causing/Assisting Suicide:

According to the Senator Fulcher there is a national effort underway to create a "right" to assisted suicide. After successful efforts in Washington, Oregon and Montana, organizations are now targeting Idaho. According to a recent opinion from the Attorney General's office, Idaho does not currently have an effective and clear prohibition against physician assisted suicide, or "aid-in-dying". This legislation will codify common law by making it illegal to assist in the suicide of another person.

The Bill creates a “safe harbor” provisions for physicians and other healthcare providers who administer appropriate palliative, hospice and end-of-life care. The safe harbor specifically states the following shall not be a violation of the act: pain management treatments that hasten or increase the risk of death, and compliance with a living will or advanced directive.

HB 1070aa passed the House and Senate and has been signed into law by the Governor.

HB 162 Hospital Licenses And Inspections:

The legislation provided immunity from civil lawsuits for health care organizations that utilize a "peer review" process for quality assurance, credentialing, privileging and professional review actions. After a recent Idaho Supreme Court ruling construed the statute very narrowly, it was felt that the statute should be clarified to re-express the original intent of the legislature when the current statute was passed. **HB 162 passed the full House 38-30 but died in the Senate on a vote of 14-21.**

HB 160 Motor Vehicle Drivers Licenses

The statement of purpose for HB 160 reads as follows: “Driving privileges are something most of us hold very dear. Yet there comes a time for many of us when, for the safety of the motoring public, we should not drive any longer. It is a difficult issue faced by most families at one time or another. Frequently family members ask a doctor to assist them with the process. Current law allows doctors to alert the Transportation Department that a person should not be driving. Doctors are reluctant to get into what can be a very emotional and highly charged issue. If a doctor submits a report to the Department in good faith, this legislation would protect the doctor from retaliatory action.”

HB 160 passed both the House and Senate with only one “no” vote. It has been signed into law by the Governor.

LEGISLATION WE MONITORED

HB 2: Electronic Prescribing of Controlled Substances: Makes technical changes to Idaho Code to implement recent federal law and regulatory changes that allow physicians to prescribe controlled substances electronically. **Signed into Law. Effective July 1, 2011**

HB 19 Medical Marijuana: Adds to existing law to provide for the Idaho Compassionate Use Medical Marijuana Act which gives Idaho physicians the authority to prescribe marijuana for certain illnesses and conditions. The House Health and Welfare Committee heard a presentation from the proponents only but **did not take a vote.**

HB 28 Freedom of Conscience for Health Care Professionals: **The bill died without a hearing.**

HB 117 State Sovereignty: Passed the House 49-20. **Failed in Senate State Affairs Committee.**

HB 128 Catastrophic Health Care Cost Program: This bill would gut the Catastrophic Health Care Program by limiting covered services from the current medically necessary coverage to emergency services only. This proposal would save the counties at least \$4 million per year by shifting the costs of caring for the medically indigent to physicians and hospitals. HB 128 would also severely limit access for needy patients with serious medical conditions such as cancer, diabetes or heart disease. The lack of access will cause patients to delay necessary treatment, which will lead to greater morbidity and mortality at a much higher cost. **Died without a hearing.**

HB 130: Amendments to Immunization Assessment Program: Allows the Immunization Assessment Board to make assessments on participating insurers to sufficiently fund the purchase of vaccines that are recommended by the Advisory Committee on Immunization Practices (ACIP) for program-eligible children; it also allows assessment funds to cover administrative costs. **Passed the House and Senate and waiting to be signed by the Governor.**

HB 160 Motor Vehicle Drivers Licenses: Provides immunity protection for physicians who submit a report to the Department of Motor Vehicles that includes a medical recommendation that a mentally or physically impaired patient have their driving privileges revoked. **LAW**

HB 162 Hospital Licenses And Inspections: Passed the House **38-30. Failed the Senate 14-21.**

HB 165 Midwives: Would allow licensed direct-entry midwives to become Medicaid providers. Proponents claim births attended by licensed midwives at home as an alternative to in-hospital births will save Medicaid \$100,000 annually. **LAW**

HB 176 Health Care Professional Transparency Act: **Failed in Committee**

HB 187 Relating To Freedom Of Conscience For Health Care Professionals: Co-sponsored by the Chair of the House State Affairs Committee, Rep. Tom Loertscher (R-Iona), the bill amends the statute enacted last year to make it consistent with provisions in the living will, durable power of attorney for health care chapter of the Idaho Code, by allowing a physician to withdraw from care for conscience reasons, but requires the physician to arrange for continuing

care before withdrawing. **Passed the House 57-17. Passed the Senate 21-13. Waiting to be signed by the Governor**

HB 220 Naturopathic Physicians Act: Died in committee.

HB 260 Medicaid Cost Containment And Health Care Improvement Act: Makes cuts of \$34.5 million in state funds, which will result in a loss of nearly \$90 million in federal matching funds. **LAW**

HB 266 Health Care Transparency Act: Died in Senate committee.

HB 298 Nullification of certain Federal Health Care Reform Provisions: This legislation would: 1) expand the Idaho Health Freedom Act to include greater protections for Idaho employers, insurers and medical providers; and 2) stop the operability of the Patient Protection and Affordable Care Act's discretionary provisions while providing a verification process to protect taxpayers against the unnecessary implementation of the PPACA during fiscal year 2012. **Passed the House and Senate. Waiting to be signed by Governor.**

HB 310: CAT Fund Program – Amendments: Among other changes to the CAT Fund, the bill limits reimbursement to 95 percent of Medicaid for services provided to medically indigent residents for a two year period from July 2011 until July 2013. Will save the state and counties \$1.6 million, and presumably shift those costs to physicians and hospitals. This bill is a substantial improvement to an earlier bill (HB 216) that contained bigger reimbursement cuts such as cutting reimbursement to 85 percent of Medicaid. **Passed the House and the Senate.**

HCR 23 Rejecting Certain Medicaid Rules: Passed House and Senate. Does not have to be signed by the Governor.

SB 1021 Relating To The Unlicensed Practice Of Medicine And The EMS System: Clarifies that care provided by an individual with an Outdoor Emergency Care (OEC) credential or training does not constitute the practice of medicine if the individual is a volunteer working without compensation and the care is within the OEC scope of practice. This bill has raised serious concerns in the EMS community because one group of providers, ski patrollers, would be providing care in emergency situations without state oversight and possibly without medical direction. In response to testimony at the Senate Health and Welfare hearing, the bill's sponsor amended the bill to limit the applicability of the proposed law to ski patrollers providing emergency services at ski resorts, to require the ski patrollers to be current members of the National Ski Patrol System and to have a current Outdoor Emergency Care credential. **Waiting to be signed by the Governor.**

SB 1070aa Homicide, Causing/Assisting Suicide: Clarifies Idaho law to specifically outlaw the act of assisted suicide, but creates important "safe harbor" provisions for physicians and other healthcare providers who administer appropriate palliative, hospice and end-of-life care. The safe harbor specifically states the following shall not be a violation of the act: pain management treatments that hasten or increase the risk of death, and compliance with a living will or advanced directive. IMA consulted with several hospice physicians to obtain their input about this legislation, and their guidance is greatly appreciated. Some physicians have raised concerns about protection when patients do not have a living will, but make oral requests to stop or withhold certain treatments. At the IMA's request, this scenario was addressed in an amendment to the bill so that now the bill does provide a safe harbor for the physician when a patient or a patient's family make an oral request to stop or withhold treatment. **LAW**

SB 1165 Pain-Capable Unborn Child Protection Act. Adopts legislative findings to recognize fetal pain and bans all pregnancy terminations after 20 weeks. The bill includes exceptions for the life and health of the mother, and to protect the life of an unborn child in the case of multiples, but does not make an exception for lethal fetal anomalies. **Waiting to be signed by the Governor.**

SB 1186: Workers Compensation Fee Schedule Adjustment: HB 260 has a provision repealing the Medicaid physician reimbursement adjustment which is also used by the IIC in its rate adjustment mechanism. This left no authorized procedure for the annual adjustment of physician fees for workers compensation services. Therefore, SB 1186 has been introduced as a “trailer bill” that authorizes the IIC to adjust physician workers compensation fees by rule. While a logical fix, it is not as beneficial for physicians as the automatic adjuster. Physicians will now have to appeal to the IIC for annual updates. **Passed the House and the Senate.**

Workers Compensation Fee Schedule Adjustment: The Idaho Industrial Commission (IIC) pending rule establishing fee schedules for physicians, hospitals and ASCs has been approved by both germane legislative committees. This means the pending rule is now a permanent rule. The IMA had raised concerns during hearings last fall that the IIC had failed to comply with the statutory requirement to adjust the medical fee schedule according to a cost of living index similar to the Medicaid adjustor. The final rule did not include an adjustment to the medical fee schedule. **Passed.**

We hope you have enjoyed staying up to date on legislation being addressed in the Statehouse this session. The full text of all legislation is available at www.legislature.idaho.gov/.

If you have a question regarding a piece of legislation or you would like the IAFP, please contact Neva Santos, IAFP Executive Director at Idahoafp@aol.com or (208) 323-1156.