

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 25, 2016

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Martin, Lee, Harris, Schmidt and Jordan

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 Heider** called the Senate Health and Welfare Committee (Committee) meeting to order at 3:01 p.m.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Nuxoll.

DOCKET NO. 16-0201-1401 **Rules of the Department of Health and Welfare related to the Idaho Time Sensitive Emergency System Council.** **Dr. Bill Morgan**, Chairman of the Time Sensitive Emergency (TSE) System Council (Council), presented this docket.

Dr. Morgan said, over the past year, the Council has rewritten some of the temporary rules. Notice of rulemaking regarding the proposed rule and amendment to temporary rule was published in July 2015. **Dr. Morgan** reviewed the main changes in the proposed rule including, (i) updating the standard manuals to include stroke and STEMI (ST-segment elevation myocardial infarctions) designations in addition to the trauma designation; and (ii) revising the fiscal impact wording to be more specific. **Dr. Morgan** reported that the six regional TSE committees for the State have been organized; and he noted that the Council had received its first application from a facility requesting state-designation as a level-four trauma center. Highlighting a new provision related to communication between surveyors and facilities, **Dr. Morgan** stated that, in order to standardize ethical practice, all communication between surveyors and facilities prior to the survey must now be facilitated by a Time Sensitive Emergency (TSE) program staff member.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Martin requested more information on how the program is doing overall. **Dr. Morgan** stated that the Council is a very cohesive group of individuals who all have a similar goal: making health care better for everyone in Idaho. The State was divided into six regional TSE committees; the first to start operating was the region two TSE committee in the Lewiston area. The region two TSE committee conducted peer review of patients transferred within their region, identified issues and corrected those issues; and, now, patient flows in the region are much better. **Dr. Morgan** reiterated that a critical access hospital in Arco has submitted the first application requesting state-designation as a level-four trauma center. Additionally, **Dr. Morgan** said there are currently three level-two trauma centers in Idaho that have been verified by the American College of Surgeons: Saint Alphonsus Regional Medical Center in Boise, Portneuf Medical Center in Pocatello and Eastern Idaho Regional Medical Center in Idaho Falls. **Dr. Morgan** said all of them have submitted applications to become state-designated and will re-designate through the American College of Surgeons.

Vice Chairman Nuxoll inquired as to why a facility would want to be a state-designated TSE center. **Dr. Morgan** responded that he thinks that the representatives of the facilities realized that they can be something better as a group than they could as individuals. **Dr. Morgan** added that he thinks facilities want to improve patient care and communications. **Vice Chairman Nuxoll** asked if the fiscal impact is \$225,800 to the General Fund. **Dr. Morgan** confirmed. **Vice Chairman Nuxoll** asked what types of facilities could be state-designated, TSE centers. **Dr. Morgan** responded that it has been the Council's intention that any hospital in Idaho that meets the criteria and chooses to apply can become a state-designated, TSE center. **Vice Chairman Nuxoll** asked if state-designated TSE centers would have to raise rates to cover their fees for state-designation. **Dr. Morgan** said no, a charge is a charge. There is one proviso, an activation fee, and it's only for trauma.

Senator Hagedorn inquired about the progress for improving information-sharing among facilities. **Dr. Morgan** responded that information is shared through the regional committees. In particular, **Dr. Morgan** noted that the sharing of educational information would increase as the Council began reviewing and designating TSE facilities.

Vice Chairman Nuxoll inquired about the relationship between the medical community and the Council. **Dr. Morgan** answered he has not heard anything negative, just positive.

MOTION:

There being no more questions, **Senator Martin** moved to approve **Docket 16-0201-1401**. **Chairman Heider** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0310-1501**

Rules of the Department of Health and Welfare related to Medicaid Enhanced Plan Benefits. **Arthur Evans**, Bureau Chief of Developmental Disability Services for the Division of Medicaid and the Department of Health and Welfare (Department), presented this docket.

Mr. Evans said the proposed rules are designed to ensure people who receive Home and Community Based Services (HCBS) have the same rights and freedoms as an individual who does not require or receive help to remain in the community. New federal regulations, which became effective in March of 2014, are the basis for the proposed rule changes. **Mr. Evans** informed the Committee that the new federal regulations require HCBS provide each participant with the following: services integrated in, and support access to, the greater community; opportunity to seek employment in competitive settings; opportunity to engage in community life; controlled personal resources; safeguard of the right to receive services in the community to the same degree of access as individuals who do not receive HCBS; optimization of individual initiative and independence in making life choices with person-centered planning services based on participant need, preferences, resources and choices; rights of privacy, dignity, respect and freedom from coercion and restraint; and choice regarding services and supports and who provides them. **Mr. Evans** noted that these rules may impact service provision in residential assisted-living facilities, certified family homes and nonresidential settings where HCBS are provided.

Mr. Evans stated that the Department engaged stakeholders through eight webinars, 23 face-to-face meetings, nine teleconferences and five meetings with the Idaho Council on Developmental Disabilities (ICDD) and DisAbility Rights Idaho. The Department held a statewide negotiated rulemaking meeting and three public hearings. **Mr. Evans** also reported that stakeholders also had access on three separate occasions to review and comment on Idaho's HCBS transition plan to ensure compliance with the new regulations. He stated that comments from those activities were reviewed, responded to and incorporated into the proposed rules as appropriate. Additionally, he noted that the ICDD has worked closely with the Department to ensure participants are informed of the proposed rules and how their rights are more fully supported by the new regulations. **Mr. Evans** reviewed the Department's efforts to disseminate information to stakeholders and participants. Providers will be given six months from the effective date of these rules to come into compliance. At the end of that time, **Mr. Evans** said the Department will begin compliance activities and continue to assist providers and agencies in identifying any additional changes that may be needed. **Mr. Evans** added that every effort is being made to ensure all agencies have the assistance needed to understand the rules and assess their services according to the rules and have time to transition into compliance.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Martin asked for clarification on the significance of underlined and double-underlined sections. **Mr. Evans** responded the items single underlined in red are the rules developed by the Department. The items double underlined and italicized are changes made after comments were received.

Chairman Heider asked if the Department and the providers are in agreement with the rules. **Mr. Evans** said he believes they are in 99.9 percent agreement moving forward.

Vice Chairman Nuxoll asked for clarification on services delivered in the participant's own home. **Mr. Evans** responded that these services are known as "residential habilitation." When providing residential rehabilitation services, an agency goes into a participant's home and provides support services to them, including behavioral and medical services. Referencing additional language in the same section, **Vice Chairman Nuxoll** asked for further explanation about restrictions imposed on HCBS setting qualities if goals and strategies to mitigate risks were identified. **Mr. Evans** stated that some HCBS participants have behaviors that may require certain restrictions. Under the proposed rules, providers and participants have the opportunity, through the person-centered planning process, to assess those behaviors and mitigate associated risks. **Vice Chairman Nuxoll** asked whether plan development for each participant was a new approach being taken by the Department. **Mr. Evans** said the Department has always required a person-centered plan for individuals who are receiving state-plan services, HCBS or 1915(i) services. **Vice Chairman Nuxoll** also asked for clarification regarding state-plan services, waivers, and options. **Mr. Evans** responded that state-plan only services include basic medical care, occupational therapy, physical therapy and speech language therapy; the 1915(c) waiver services include HCBS; and the 1915(i) services include developmental therapy and crisis therapy.

Senator Lee asked whether community crisis supports were in place before this rule was drafted, or if community crisis supports are newly available services. **Mr. Evans** replied crisis services were in place, but the Department is trying to clarify the language. **Senator Lee** asked Mr. Evans to define "crisis supports." **Mr. Evans** answered, as the rules currently stand, crisis would be loss of home, loss of job, or any type of imminent danger to the participant. He added that he would find the specific section that defines "crisis supports" and provide that information to her.

Senator Hagedorn questioned how, with these new rules, patients are better off. **Mr. Evans** said it's always been the Department's assumption that HCBS provided these rights to individuals, but the proposed rules give the Department the ability to encourage better services and enhance quality. **Senator Hagedorn** asked what burdens would result from these proposed rules. **Mr. Evans** responded that the providers will be required to do a one self-assessment and maintain an annual service plan; and the Department will utilize its current quality assurance staff to assess and enforce compliance.

Referring to home and community based qualities, **Senator Jordan** noted that the proposed rule required mitigation if a setting requirement presented a health and safety risk to the participant. She inquired how health and safety risks were assessed for participants. **Mr. Evans** replied the person-centered planning team helps identify the risks unique to each individual. Referring to the "access to food" provision in the proposed rule, **Senator Jordan** asked if there are nutritional standards for the food provided to participants. **Mr. Evans** responded the person-centered planning team would identify potential risks, write goals and talk about how those risks could be mitigated to prevent someone from injuring himself or herself.

Senator Schmidt asked if the Department took a recent Idaho Supreme Court decision, regarding support, into consideration while writing the rules. **Mr. Evans** responded that the referenced court decision did not directly relate to these proposed rules.

TESTIMONY:

Vice Chairman Nuxoll called for testimony.

Ian Bott testified that he represents Idaho Self-Advocate Leadership Network and ICDD. Mr. Bott stated his support for the proposed rules. He said he feels the proposed rules would be a win-win and could help more people get the chance to be reintegrated into society.

Christine Pisani, Executive Director of ICDD, testified that the ICDD supports the proposed rules and that the HCBS rule aligns with the mission and the values of ICDD (see attachment 1). **Senator Martin** asked if Ms. Pisani felt comfortable with the amount of input the ICDD was able to give in the rulemaking process. **Ms. Pisani** said she did.

Bill Benkula, President of Idaho Association of Community Providers (IACP), testified that the IACP supports the proposed rules. Due to the potential costs involved, **Mr. Benkula** formally requested that members of his association be involved in the implementation of the rules (see attachment 2).

Jim Baugh, executive director of DisAbility Rights Idaho (DRI), a private, nonprofit corporation, testified that DRI supports the proposed rules and noted that the State rules are a reflection of many years of struggle by people with disabilities dependent on this type of Medicaid service. **Mr. Baugh** stated it is important that people who need these Medicaid services are still entitled to the freedoms, liberties and rights that they had before they had a disability. **Mr. Baugh** expressed some benefits of the rule change: allowing people to choose who their provider is; having individualized person-centered planning; allowing individuals more control and choice about their services; the right to make decisions about where they live and how they live; an improved service system; and improved life for those who participate. DRI participated in the process of developing the rules and supplied some comments. **Mr. Baugh** added he would like to see more rules to deal with some other issues that – within Medicaid – limit people's choices and potentially make it difficult for them to integrate into communities.

Vice Chairman Nuxoll asked for Mr. Baugh's input on the notion that if rules are not implemented with costs in mind there could be an additional cost to the various businesses that contract with the Department. **Mr. Baugh** said it is always true that you can take a rule that appears to be no different from the past and then change the way you implement it in such a way that it becomes burdensome. But, for the most part, these rules are more clarifying rules than they are new impositions. **Mr. Baugh** added he thinks, in varying cases, the burden would be small and the benefit would be great.

Kelly Keele, representing Vocational Services of Idaho (VSI), testified that the VSI supports the proposed rules (see attachment 3).

There being no further testimony, **Vice Chairman Nuxoll** asked Mr. Evans to make a closing statement. **Mr. Evans** said the Department has committed to developing tools and working with agencies and providers to implement the rules. The rules are broad and overarching and do not have a lot of specifics because the Department recognizes the uniqueness of rural versus urban areas, as well as varying facilities and agencies. The Department has a staff member who is committed full time to help implement the rules. **Mr. Evans** said it is the Department's full intent to work very closely with providers, advocates and stakeholders to make sure that the rules are implemented in the most efficient manner possible.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Hagedorn asked Mr. Evans if he foresees the Department requiring any new full-time positions (FTP) as a result of implementing these rules, in the next couple of years. **Mr. Evans** referred the question to Lisa Hettinger, Idaho Medicaid Division Administrator. **Ms. Hettinger** said, at this point in time, the Department does not anticipate any new FTP need.

MOTION:

There being no more questions, **Chairman Heider** moved to approve **Docket 16-0310-1501**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0313-1501**

Rules of the Department of Health and Welfare related to Consumer-Directed Services. **Mr. Evans** presented this docket.

Mr. Evans said the proposed rules are a companion to **Docket No. 16-0310-1501** and they provide for the enhancement of the quality of life for elderly and disabled individuals receiving HCBS by ensuring their basic rights. The changes presented are to ensure these participants receive services that comply with the new federal regulations. In developing these rules, the Department engaged in 45 stakeholder meetings, conducted a statewide negotiated rulemaking meeting, held three public hearings, published the Idaho State Transition Plan on three separate occasions and allowed public comment for each posting. Comments from those activities have been reviewed, responded to and incorporated as appropriate. **Mr. Evans** added the Department has committed to ongoing work with participants and agencies to assist in transition.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Vice Chairman Nuxoll asked why this rule was needed when it looks like it's connected to the rules that were just passed. **Mr. Evans** said the rules are specific to consumer direction so the Department had to modify them to align with the rules that were just passed.

MOTION:

There being no more questions, **Senator Hagedorn** moved to approve **Docket No. 16-0313-1501**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0304-1501**

Rules of the Department of Health and Welfare related to the Food Stamp Program in Idaho. Kristen Matthews, Program Manager with the Department of Health and Welfare (Department), presented this docket.

Ms. Matthews stated that the proposed rules contain clarifications that keep the food stamp program (also known as the Supplemental Nutrition Assistance Program or SNAP) in compliance with federal program regulations and the Department's processing standards. SNAP, which is completely funded by the U.S. Department of Agriculture, provides food assistance to Idaho's neediest families. **Ms. Matthews** stated that in 2011 the Idaho Legislature approved a \$5,000 resource limit for qualifying households. The proposed rules align SNAP with federal regulations that exclude households from qualifying for the \$5,000 resource limit when they are disqualified from SNAP for not following program rules. Specifically, the proposed rules lower the resource limit to \$2,250 or \$3,250 for households that include a person with a disability or an elderly person. The Department did not conduct negotiated rulemaking and did not receive negative comments during the public comment period. **Ms. Matthews** reported there is no fiscal impact to the State as a result of this change.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

MOTION:

There being no questions, **Chairman Heider** moved to approve **Docket No. 16-0304-1501**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0402-1501**

Rules of the Department of Health and Welfare related to the Idaho Telecommunication Service Assistance Program. Ms. Matthews presented this docket.

Ms. Matthews stated that the proposed rules clarify language in rule by naming the Department the responsible party for the Idaho Telecommunications Service Assistance Program. The updates will also align Idaho rule with state policies and the Department's administration of the program. Although there was no negotiated rulemaking, no negative comments were received during the public comment period. **Ms. Matthews** reported there is no fiscal impact to the State as a result of this change.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Senator Schmidt asked if the eligibility changes are easily combined with the eligibility assessment performed by the Department. **Ms. Matthews** replied the changes in the docket are intended to clarify that the Department is the grant holder, or responsible party, for administering the program. It does not change any of the eligibility requirements, how eligibility is determined or how applications are taken.

Senator Hagedorn questioned why a community action agency did not comment on the change. **Ms. Matthews** responded that the Department currently contracts the administration of this program out to the State association that represents the community action agencies; before bringing these changes forward, the Department met with that association. The State association contacted the community action agencies to determine if there were any issues with the Department making the change. They didn't have any issues at that time, so there was no negotiated rulemaking. **Ms. Matthews** added no one came forward during the comment period.

MOTION:

There being no more questions, **Senator Hagedorn** moved to approve **Docket No. 16-0402-1501**. **Senator Schmidt** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0413-1501**

Rules of the Department of Health and Welfare related to the Emergency Food Assistance Program. Ms. Matthews presented this docket.

Ms. Matthews stated that the proposed rules clarify language in rule by naming the Department as the responsible party for the Emergency Food Assistance Program. The Department did not conduct negotiated rulemaking, and did not receive negative comments during the public comment period. **Ms. Matthews** reported there is no fiscal impact to the State as a result of this change.

MOTION: There being no questions, **Senator Schmidt** moved to approve **Docket No. 16-0413-1501**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0414-1501 **Rules of the Department of Health and Welfare related to the Low Income Home Energy Assistance Program. Ms. Matthews** presented this docket.

Ms. Matthews stated that the proposed rules update language, remove obsolete references and clarify accountability by naming the Department as the responsible party for the Low Income Home Energy Assistance Program. The updates align Idaho rule with State policies and the Department's administration of the program. The Department did not conduct negotiated rulemaking and did not receive negative comments during the public comment period. **Ms. Matthews** reported there is no fiscal impact to the State as a result of this change.

MOTION: There being no questions, **Senator Schmidt** moved to approve **Docket No. 16-0414-1501**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0416-1501 **Rules of the Department of Health and Welfare related to the Weatherization Assistance Program. Ms. Matthews** presented this docket.

Ms. Matthews indicated that the proposed rule changes were identical to the previous rule as applied to the Weatherization Assistance Program.

Senator Martin inquired why the language regarding community action agencies was removed from the proposed rule. **Ms. Matthews** responded the language is being removed in order to name the Department as the responsible agent and allows the Department to contract or bid out to agencies that meet the requirements of the program. **Ms. Matthews** stated that, ultimately, the individuals or entities the Department works with could be private entities, a contractor, a nonprofit agency or a community action agency.

MOTION: There being no more questions, **Senator Martin** moved to approve **Docket No. 16-0416-1501**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Nuxoll passed the gavel back to Chairman Heider.

ADJOURNED: **Chairman Heider** expressed appreciation and thanks to the Department of Health and Welfare. There being no further business, **Chairman Heider** adjourned the meeting at 4:19 p.m.

Senator Heider
Chair

Karen R. Westbrook
Secretary

Kara Machado
Assistant